

**OFFICIAL CODE
OF
GEORGIA**

ANNOTATED



VOLUME 37

Title 48. Revenue and Taxation
Chapters 7-18
2013 Edition



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OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

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The Code Revision Commission
The Office of Legislative Counsel
and
The Editorial Staff of LexisNexis®



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Volume 37 2013 Edition

Title 48. Revenue and Taxation (Chapters 7-18)

Including Acts of the 2013 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

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2013

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OFFICE OF SECRETARY OF STATE

**I, Brian P. Kemp, Secretary of State of the
State of Georgia, do hereby certify that**

the statutory portion of the Official Code of Georgia Annotated contained
in this volume is a true and correct copy of such material as enacted by
the General Assembly of Georgia; all as same appear of file and record in
this office. _____



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
the seal of my office, at the Capitol, in the City of Atlanta, this
28th day of June, in the year of our Lord Two Thousand and
Thirteen and of the Independence of the United States of
America the Two Hundred and Thirty-Seventh.

B. P. Kemp

Brian P. Kemp, Secretary of State

Preface

This volume cumulates and replaces the 2009 edition of Volume 37 of the Official Code of Georgia Annotated, as supplemented by the 2012 Cumulative Supplement. The 2009 Volume 37 and its supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Title 48 (Chapters 7-18) by the General Assembly through the 2013 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through March 29, 2013. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice Forms, American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2011, 2012, and 2013 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2011 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Editor's notes. — Ga. L. 1978, p. 309, et seq., enacted a recodification of the revenue laws for the state. Section 1 of the Act provides that the intent of the General Assembly was to provide for a general recodification of revenue laws, to omit obsolete and duplicative provisions, to make uniform administrative provisions where uniformity was possible without major substantive change, and to use simple understandable English in the revenue laws. The section further provides that it was not the intent of the General Assembly to make any substantive change in the revenue laws of this state as the laws existed prior to January 1, 1980, except as expressly provided in the reenactment.

Law reviews. — For article surveying taxpayers' remedies in Georgia, see 1 Ga. B.J. 19 (1939). For article discussing application of the principle that he who would have equity must do equity to taxpayer's suits, see 7 Ga. St. B.J. 305 (1971). For article discussing taxation of foreign businesses in Georgia, see 27 Mercer L. Rev. 629 (1976). For article surveying pro-

visions of the Public Revenue Code, former Code 1933, T. 92 (see this title), see 14 Ga. St. B.J. 156 (1978). For article, "A Practical Guide to State Tax Practice," see 15 Ga. St. B.J. 74 (1978). For article surveying judicial decisions affecting Georgia's state and local taxation laws, decided under the prior Public Revenue Code, Code 1933, Title 92 (see this title), see 31 Mercer L. Rev. 217 (1979). For article discussing ad valorem taxation and interest in real property in Georgia, prior to the enactment of the Georgia Public Revenue Code, T. 48, see 31 Mercer L. Rev. 293 (1979). For article, "Reflections on the Revenue Act of 1978 and Future Tax Policy," see 13 Ga. L. Rev. 687 (1979). For annual survey on state and local taxation, see 36 Mercer L. Rev. 307 (1984). For article surveying state and local tax law, see 37 Mercer L. Rev. 361 (1985). For annual survey of state and local taxation, see 40 Mercer L. Rev. 357 (1988). For annual survey of state and local taxation, see 42 Mercer L. Rev. 421 (1990). For article, "Revenue and Taxation: Sales and Use Taxes," see 29 Ga. St. U.L. Rev. 112 (2012).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1929, p. 58 and former Code 1933, T. 92, which was subsequently repealed but was succeeded by provisions in this title, are included in the annotations for this title.

Revenue laws to be construed in favor of taxpayer. — Revenue laws are neither remedial statutes nor laws founded upon any permanent public policy, and are not, therefore, to be liberally construed. Hence, whenever there is a just doubt, that doubt should absolve the tax-

payer from the burden. *Mystyle Hosiery Shops, Inc. v. Harrison*, 171 Ga. 430, 155 S.E. 765 (1930) (decided under Ga. L. 1929, p. 58).

Effect upon local laws. — The 1978 Georgia Public Revenue Code, Ga. L. 1978, p. 309, did not repeal by implication a local Act authorizing a city and county to contract for a consolidated board of tax assessors, and a later statute repealing the local Act was not void. *Chatham County v. Hussey*, 267 Ga. 895, 485 S.E.2d 753 (1997).

Statutes which impose restrictions

upon trade or common occupations, and which levy an excise or tax upon those trades or occupations, must be construed strictly. *Mystyle Hosiery Shops, Inc. v. Harrison*, 171 Ga. 430, 155 S.E. 765 (1930) (decided under Ga. L. 1929, p. 58).

Revenue laws are not to be extended by implication. — Statutes levying duties or taxes upon subjects or citizens are to be construed most strongly against the government, and in favor of their subjects or citizens, and their provisions are not to be extended, by implication, beyond the clear import of the language used. *Mystyle Hosiery Shops, Inc. v. Harrison*, 171 Ga. 430, 155 S.E. 765 (1930) (decided under Ga. L. 1929, p. 58).

When taxpayer's remedies do not expressly include action at law, such action does not lie. — When the General Assembly authorizes a tax for governmental purposes and provides an adequate remedy for the tax's collection by administrative officers, the necessary in-

tent is that the collection of the tax is exclusively confined to that administrative department of the government, and when the statute undertakes to provide remedies for the collection of taxes, and those given do not embrace an action at law, a common-law action for the recovery of taxes as a debt will not lie. *Kirk v. Bray*, 181 Ga. 814, 184 S.E. 733 (1935) (decided under former Code 1933, T. 92).

Court of equity has no power to foreclose lien and order sale. — Power to levy and collect taxes is exclusively a legislative function, and unless authorized by statute, a court of equity is without power to foreclose a lien for taxes and order a sale of the property. No such power having been conferred by statute on a court of equity in this state, a court errs in decreeing that land be sold by the sheriff for the payment of state and county taxes. *Kirk v. Bray*, 181 Ga. 814, 184 S.E. 733 (1935) (decided under former Code 1933, T. 92).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, T. 92, which was subsequently repealed but was succeeded by provisions in this title, are included in the annotations for this title.

Transaction must have object other

than tax evasion. — While ordinarily motive is not controlling in a transaction planned for tax avoidance purposes, the rule is subject to an exception. There must be some authentic object other than the defeat of a tax. 1962 Op. Att'y Gen. p. 558 (decided under former Code 1933, T. 92).

RESEARCH REFERENCES

ALR. — Validity of statutory classifications based on population — tax statutes, 98 ALR3d 1083.

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48-7-127.	(For effective date of repeal, see note.) Other violations of article; penalties.		
48-7-128.	Withholding tax on sale or transfer of real property and associated tangible personal property by nonresidents.	48-7-165.	Hearing procedure; adjustments of incorrect debts; nonavailability of hearings before department; issues previously litigated; appeals.
48-7-129.	Withholding tax on distributions to nonresident members of partnerships, Subchapter "S" corporations, and limited liability companies.	48-7-166.	Final determination of debt due; transfer from escrow account to credit of debtor's account of debt due; notice of setoff; contents; refund of excess.
Article 6			
Local Income Taxes			
48-7-140.	Prohibition of local income taxes.	48-7-167.	Effect of setoff on refund.
		48-7-168.	Priority of department over claimant agencies for collection by setoff.
		48-7-169.	Authorization of commissioner to prescribe forms and promulgate rules and regulations.
		48-7-170.	Confidentiality exemption; providing of necessary information by commissioner to claimant agencies; nondisclosure of information by employees or prior employees of agencies; penalties.
Article 7			
Setoff Debt Collection			
48-7-160.	Purposes.		
48-7-161.	Definitions.		
48-7-162.	Collection remedy additional.		
48-7-163.	Collection of debts through setoff; minimum debt; procedure; exceptions; request for setoff.		

Cross references. — Penalty for disclosure of information obtained by person, corporation, or others engaged in business of preparing federal or state income tax returns or assisting in such preparation, § 16-11-81. Opportunity for taxpayers to contribute to Georgia Greenspace Trust Fund, § 36-22-4. Establishment of plans

to provide tax deferral benefits for state, county, or other employees, § 45-18-30 et seq.

Law reviews. — For article, "Federal-Georgia Income Tax Differences: More Than Just a Nuisance," see 20 Ga. St. B.J. 20 (1983).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 92-30 through 92-33, which was subsequently repealed but was succeeded by provisions

in this chapter, are included in the annotations for this chapter.

Much of the state income tax law is patterned upon the United States Internal Revenue Code of 1954. Carter v.

Oxford, 102 Ga. App. 762, 118 S.E.2d 216 (1960), *aff'd*, 216 Ga. 821, 120 S.E.2d 298 (1961) (decided under former Code 1933, Ch. 92-30 through 92-33).

No intent to tax income earned outside state by domestic corporation. — It is not the purpose and intent of former Code 1933, Ch. 92-30 through 92-33 to tax the net income of a domestic corporation derived from property owned or business done outside the territorial limits of this state, although this may constitutionally be done, as regards a domestic corporation. *Interstate Bond Co. v. State Revenue Comm'n*, 50 Ga. App. 744, 179 S.E. 559 (1935) (decided under former Code 1933, Ch. 92-30 through 92-33).

"Doing business" construed. — "Doing business" in order to incur tax liability under statutes imposing taxes on persons doing business in a state means that a foreign corporation must transact some substantial part of the corporation's ordinary business there, and that it must be continuous in character as distinguished from a mere casual or occasional transaction. A series of transactions is not necessarily conclusive on the question of whether the corporation is doing business. *Redwine v. United States Tobacco Co.*, 209 Ga. 725, 75 S.E.2d 556 (1953) (decided under former Code 1933, Ch. 92-30 through 92-33).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 92-99, which was subsequently repealed but was succeeded by provisions in this chapter, are included in the annotations for this chapter.

Elements of proof of criminal violation of income tax laws. — To sustain a criminal prosecution for violation of the

state income tax laws, it must be shown that the violator is subject to the requirements of the laws; that after actual notice the violator failed to comply with the request of the commissioner, and that the violator resides in the county where the proceedings are instituted. 1945-47 Op. Att'y Gen. p. 564 (rendered under former Code 1933, Ch. 92-30 through 92-33).

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 42 ALR2d 797.

Damages for breach of contract as affected by income tax considerations, 50 ALR4th 452.

ARTICLE 1

GENERAL PROVISIONS

RESEARCH REFERENCES

ALR. — Bond or warrant of governmental subdivision as subject of taxation or exemption, 26 ALR 547; 44 ALR 510.

Tax computed upon aggregate income of husband and wife who make joint return as apportionable in respect of liability for its payment, 104 ALR 430.

Retroactive effect of income tax, 109 ALR 523; 118 ALR 1153.

Income tax in respect of corporate earnings returned to stockholding customers in proportion to business transacted, 109 ALR 969.

Validity and construction of statute or ordinance providing for relief of poor persons from taxes, 123 ALR 597.

Valuation of gift property for purposes of gift tax, 60 ALR2d 1304.

Exclusion of meals and lodging from gross income under "convenience of the employer" rule, 84 ALR2d 1215.

What constitutes "reasonable cause" un-

der state statutes imposing penalty on taxpayer for failure to file timely tax return unless such failure was due to "reasonable cause," 29 ALR4th 413.

48-7-1. Definitions.

As used in this chapter, the term:

(1) "Corporation" includes, but is not limited to, all associations, professional associations organized pursuant to Chapter 10 of Title 14, and insurance companies.

(2) "Deficiency" means the amount by which the tax imposed by this chapter or any prior law exceeds the amount shown as the tax due by the taxpayer upon his return or, if no amount is shown as the tax due by a taxpayer upon his return or if no return is made by the taxpayer, the amount determined by the commissioner to be the correct amount of the tax.

(3) "Dividend," when used for the purpose of defining a taxable dividend, means any distribution made by a corporation out of its earnings or profits to its shareholders or members whether the distribution is made in cash, other property, or a stock different from the stock on which the dividend is paid. "Dividend" also includes, but is not limited to, the portion of the assets of a corporation distributed at the time of dissolution which is in effect a distribution of earnings.

(4) "Fiscal year" means an accounting period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has elected a year consisting of 52 to 53 weeks for federal income tax purposes, the term means the period so elected.

(5) "Income tax day" means December 31 of each calendar year or, if a person can show to the satisfaction of the commissioner that the person has already established the fiscal year as his taxable year for income tax reporting purposes, the last day of the person's fiscal year.

(6) "Nonresidents" means taxable nonresidents and nontaxable nonresidents.

(7) "Nontaxable nonresident" means every individual who is not otherwise a resident of this state or a taxable nonresident of this state.

(7.1) "Owning property or doing business in this state" shall not include the following activities, either singularly or in the aggregate, with respect to any person that is not otherwise subject to income taxation in the State of Georgia that has contracted with a commercial printer for any printing, including printing related activities, and distribution services to be performed in Georgia:

(A) The ownership by that person of tangible or intangible property located at the Georgia premises of the commercial printer for use by the printer in performing its services for the owner;

(B) The sale and distribution by that person of printed material produced at and shipped or distributed from the Georgia premises of the commercial printer;

(C) The activities performed by or on behalf of that person at the Georgia premises of the commercial printer which are directly related to the services provided by that commercial printer; or

(D) The printing, including printing related activities and distribution related activities, performed by the commercial printer in Georgia for or on behalf of that person.

(8) "Paid," for the purpose of the deductions under this chapter, means "paid or accrued" or "paid or incurred." The terms "paid or accrued," "paid or incurred," and "incurred" shall be construed according to the method of accounting upon the basis of which the net income is computed under this chapter.

(9) "Received," for the purpose of the computation of the net income under this chapter, means "received or accrued." The term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this chapter.

(10)(A) "Resident" means:

(i) Every individual who is a legal resident of this state on income tax day;

(ii) Every individual who, though not necessarily a legal resident of this state, nevertheless resides within this state on a more or less regular or permanent basis and not on the temporary or transitory basis of a visitor or sojourner and who so resides within this state on income tax day; and

(iii) Every individual who on income tax day has been residing within this state for 183 days or part-days or longer, in the aggregate, of the immediately preceding 365 day period.

(B) Every individual who, having become a resident of this state for income tax purposes under divisions (i) and (ii) of subparagraph (A) of this paragraph, is deemed to continue to be a resident of this state until the person shows to the satisfaction of the commissioner that he or she has become a legal resident or domiciliary of another state and that he or she does not come within division (iii) of subparagraph (A) of this paragraph. Upon such a showing with respect to any 12 month period immediately preceding income tax

day, the person shall be taxable as a resident of this state only to the date of becoming a nonresident on an apportionment basis as prescribed in Code Section 48-7-85.

(C) Every individual who becomes a resident of this state for income tax purposes under divisions (i) and (ii) of subparagraph (A) of this paragraph for the first time during the 12 month period immediately preceding income tax day and who does not otherwise come within division (iii) of subparagraph (A) of this paragraph shall be taxable as a resident only from the date of becoming a resident on an apportionment basis as prescribed in Code Section 48-7-85.

(11) "Taxable nonresident" means:

(A) Every individual who is not otherwise a resident of this state for income tax purposes and who regularly and not casually or intermittently engages within this state, by himself or herself or by means of employees, agents, or partners, in employment, trade, business, professional, or other activity for financial gain or profit, including, but not limited to, the rental of real or personal property located within this state or for use within this state. "Taxable nonresident" does not include a legal resident of another state whose only activity for financial gain or profit in this state consists of performing services in this state for an employer as an employee when the remuneration for the services does not exceed the lesser of 5 percent of the income received by the person for performing services in all places during any taxable year or \$5,000.00;

(B) Every individual who is not otherwise a resident of this state for income tax purposes and who sells, exchanges, or otherwise disposes of tangible property which at the time of the sale, exchange, or other disposition has a taxable situs within this state or who sells, exchanges, or otherwise disposes of intangible personal property which has acquired at the time of the sale, exchange, or other disposition a business or commercial situs within this state;

(C) Every individual who is not otherwise a resident of this state for income tax purposes and who receives the proceeds of any lottery prize awarded by the Georgia Lottery Corporation;

(D) Every individual who is not a resident of this state for income tax purposes and who makes a withdrawal as provided for in paragraph (10) of subsection (b) of Code Section 48-7-27; and

(E)(i) For purposes of this subparagraph, the term:

(I) "Deferred compensation" means deferred compensation received from a nonqualified deferred compensation plan.

(II) "Nonqualified deferred compensation plan" means the same as it is defined in Section 3121(v)(2) of the Internal Revenue Code.

(ii) Every individual who is not otherwise a resident of this state for income tax purposes and who regularly and not casually or intermittently engaged in a prior year within this state, by himself or herself, in activity for financial gain or profit and who receives income from such activity in the form of deferred compensation or income from the exercise of stock options and such income exceeds the lesser of 5 percent of the income received by the person in all places during the taxable year or \$5,000.00; provided, however, that this subparagraph shall not apply in the case of an individual who receives such income when the state is prohibited from taxing such income pursuant to federal law. For stock options granted and deferred compensation plans established before January 1, 2011, this subparagraph shall apply only to the portion earned on or after January 1, 2011. The commissioner shall by rule and regulation provide the method of determining the amount earned in Georgia using a "days worked in Georgia" method. Such earned amount shall be included in the Georgia income of the taxable nonresident.

(iii) Employers shall withhold Georgia income tax as provided in Article 5 of this chapter on all deferred compensation and stock options which are required to be included in Georgia income of the taxable nonresident. For purposes of withholding only:

(I) The employer shall use records that are available to them. However, if the records are not available, the employer may reasonably rely upon a written representation, signed under penalties of perjury, from the employee of the number of days worked in Georgia. The employer shall only be held liable if the employer had actual or constructive knowledge that the employee's written representation was false or contained erroneous information; and

(II) The employer may elect to determine the number of days worked in Georgia by assuming the employee worked in Georgia only during the time the employee was a resident of Georgia.

(iv) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the tax provisions of this paragraph.

(12) "Taxable year" means the calendar year or the fiscal year ending during the calendar year upon the basis of which the net

income is computed under this chapter. (Ga. L. 1931, Ex. Sess., p. 24, §§ 2, 35; Ga. L. 1931, p. 7, § 85; Code 1933, §§ 92-3002, 92-3302(f); Ga. L. 1937, p. 109, § 1; Ga. L. 1937-38, Ex. Sess., p. 150, § 1; Ga. L. 1941, p. 221, § 1; Ga. L. 1957, p. 397, §§ 1, 2; Ga. L. 1962, p. 454, § 1; Ga. L. 1962, p. 703, § 1; Ga. L. 1963, p. 16, § 1; Ga. L. 1975, p. 858, § 1; Ga. L. 1976, p. 980, § 1; Code 1933, § 91A-3501, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 61; Ga. L. 1994, p. 597, § 1; Ga. L. 1998, p. 124, § 2; Ga. L. 2002, p. 372, § 1; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 159, § 7/HB 488; Ga. L. 2008, p. 159, § 6/HB 1014; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 525, § 1/HB 1198; Ga. L. 2011, p. 297, § 2/HB 346.)

The 2011 amendment, effective May 11, 2011, in subparagraph (11)(E), designated the existing provisions as division (11)(E)(ii), added division (11)(E)(i), added the second through fourth sentences in division (11)(E)(ii), and added divisions (11)(E)(iii) and (11)(E)(iv). See editor's note for applicability.

Editor's notes. — Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that §§ 1-4, 6, and 8-14 of this Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2005, p. 159, § 27(c)/HB 488, not codified by the General Assembly, provides that § 7 of this Act applies to all taxable years beginning on or after January 1, 2005.

Ga. L. 2010, p. 525, § 2/HB 1198, not codified by the General Assembly, pro-

vides that this Act shall be applicable to all taxable years beginning on or after January 1, 2011.

Ga. L. 2011, p. 297, § 5(b)/HB 346, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall be applicable to all taxable years beginning on or after January 1, 2011.

Law reviews. — For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973). For article discussing taxation of foreign businesses in Georgia, see 27 Mercer L. Rev. 629 (1976). For article surveying Georgia cases in the area of business associations from June 1977 through May 1978, see 30 Mercer L. Rev. 1 (1978). For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

JUDICIAL DECISIONS

ANALYSIS

IN GENERAL DIVIDENDS

In General

Nature of income tax. — General view is that an income tax is not a property tax, but more in the nature of an excise tax. However, an income tax is not an occupation or a poll tax, nor is it a franchise tax or a sales tax, but the very

antithesis thereof. *Interstate Bond Co. v. State Revenue Comm'n*, 50 Ga. App. 744, 179 S.E. 559 (1935).

Income tax relates to product or income from property or business. — An income tax may be described as one relating to the product or income from property or from business pursuits, and

In General (Cont'd)

has been defined as a tax on the yearly profits arising from property, professions, trades, or offices, or as a tax on a person's income, emoluments, profits, and the like, or the excess thereof over a certain amount. *Interstate Bond Co. v. State Revenue Comm'n*, 50 Ga. App. 744, 179 S.E. 559 (1935).

Legislative intent as to income earned outside state before becoming resident. — Former Code 1933, §§ 92-3002, 92-3101, 92-3112, and 92-3302 (see O.C.G.A. §§ 48-7-1, 48-7-20, and 48-7-30), when construed together, authorize, if they do not compel, the interpretation that the General Assembly did not intend to impose a tax upon such portion of the income of a resident as was derived by the resident from sources outside the state before the date on which the individual became a resident of this state. *Forrester v. Culpepper*, 194 Ga. 744, 22 S.E.2d 595, answer conformed to, 68 Ga. App. 382, 23 S.E.2d 106 (1942).

Dividends

Legislative intent as to assets distributed at time of dissolution. — General Assembly's intention in enacting this section is to ensure the taxation of those portions of a corporation's assets distributed at the time of dissolution as would in effect be a distribution of earnings by not

allowing corporations to liquidate at depression values and take losses on the difference between the value on the date of liquidation and the sole stockholder's cost or original basis for the stock. *Chilivis v. Cleveland Elec. Co.*, 142 Ga. App. 751, 236 S.E.2d 872 (1977).

Construction of definition of "dividend" with other provisions. — In light of the legislative history of former Code 1933, § 91A-3501 (see O.C.G.A. § 48-7-1) and *Oxford v. Carter*, 216 Ga. 821, 120 S.E.2d 298 (1961), the Court of Appeals is not willing to say that the term "dividend" as used in paragraph (b)(10) of former Code 1933, § 92-3102 (see O.C.G.A. § 48-7-21 (b)(8)), incorporates the definition in this section or that "dividend" as used in this section clearly and distinctly includes a final distribution in liquidation. *Chilivis v. Cleveland Elec. Co.*, 142 Ga. App. 751, 236 S.E.2d 872 (1977).

Construction with Internal Revenue Code. — Words "the portion of the assets of a corporation distributed at the time of dissolution which is in effect a distribution of earnings" in the definition of "dividend" mean such portion of the assets as would be "essentially equivalent to the distribution of a taxable dividend" under 26 U.S.C. § 302 and the regulations interpreting that section. *Carter v. Oxford*, 102 Ga. App. 762, 118 S.E.2d 216 (1960), *aff'd*, 216 Ga. 821, 120 S.E.2d 298 (1961).

OPINIONS OF THE ATTORNEY GENERAL

Taxation of stock distributed to shareholders pursuant to divestiture ruling. — Stock held by a corporation which stock is distributed to the corporation's stockholders in accordance with divestiture ruling of federal courts is taxable as a dividend under state income tax laws. 1962 Op. Att'y Gen. p. 521.

Becoming legal resident or domiciliary of another state. — To become a legal resident or domiciliary of another state one must not only reside there but must do so with the intention of giving up one's legal residence or domicile in Georgia. 1969 Op. Att'y Gen. No. 69-171.

Effect on status as a resident of

temporary absence from state. — If a citizen is a resident of this state, the citizen will remain a resident of this state and subject to the income tax laws, even though absent and temporarily living in another jurisdiction, until the citizen is legally qualified to become a resident of another state. 1954-56 Op. Att'y Gen. p. 763.

What activity gives rise to classification as taxable nonresidents. — This section does not attach merely because a nonresident happens to be administratively assigned to, and paid from, an office located in this state. However, if employment takes place within this state

beyond the extent specified in this section, then these obligations do attach, irrespec-

tive of the fact of nonresidency, or other factors. 1960-61 Op. Att'y Gen. p. 502.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 502.

C.J.S. — 84 C.J.S., Taxation, §§ 145 et seq., 440, 441, 442. 85 C.J.S., Taxation, §§ 1831, 1906, 1907.

ALR. — Inhabitaney or residence, within provisions of income tax law as equivalent of domicile, 82 ALR 982.

Validity and construction of state statutes imposing tax on income derived from dividends on stock of foreign corporations, 102 ALR 77; 143 ALR 147.

Meaning of association or joint stock company within statutes taxing associations or joint stock companies as corpora-

tions ("Massachusetts" or business trusts), 108 ALR 340; 144 ALR 1050; 166 ALR 1461.

Income tax in respect of salaries of public officers and employees, 125 ALR 1421.

Income tax on income of taxpayer who dies during taxable year, 142 ALR 213.

Income tax on nonresident or on foreign corporation, 156 ALR 1370.

Income tax in relation to stock dividends (including character of corporate distributions as stock dividends), 167 ALR 554.

48-7-2. Failure of person to pay tax, file return, keep records, supply information, or exhibit books under this chapter; penalty.

(a) It shall be unlawful for any person who is required under this chapter to pay any tax, make any return, keep any records, supply any information, or exhibit any books or records for the purpose of computation, assessment, or collection of any tax imposed by this chapter to fail to:

- (1) Pay the tax;
- (2) Make the return;
- (3) Keep the records; or
- (4) When requested to do so by the commissioner:
 - (A) Supply the information; or
 - (B) Exhibit the books or records.

(b) In addition to other penalties provided by law, any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Code 1933, § 92-3217, enacted by Ga. L. 1937, p. 109, § 17; Code 1933, § 91A-9930, enacted by Ga. L. 1978, p. 309, § 2.)

JUDICIAL DECISIONS

O.C.G.A. § 48-7-2 is unconstitutional to the extent that the statute authorizes imprisonment for mere non-

payment of income taxes. *State v. Higgins*, 254 Ga. 88, 326 S.E.2d 728 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Prosecution for violation of section. — Georgia resident who files a state income tax return but who fails and refuses to pay such tax can be prosecuted for

a misdemeanor. Venue for such prosecution is Fulton County. 1969 Op. Att’y Gen. No. 69-326.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 512 et seq.

547. 85 C.J.S., Taxation, §§ 1715, 1728 et seq., 1785.

C.J.S. — 84 C.J.S., Taxation, §§ 542,

48-7-3. Unlawful assisting, procuring, counseling, or advising in filing income tax return under chapter; penalty.

(a) With respect to any matter arising under this chapter, it shall be unlawful for any person willfully to aid or assist in, or procure, counsel, or advise the preparation or presentation of, a false or fraudulent return, affidavit, claim, or document, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000.00 or imprisoned for not more than six months, or both, and shall be required to pay the costs of prosecution. (Ga. L. 1931, Ex. Sess., p. 24, § 49; Code 1933, § 92-9912; Code 1933, § 91A-9931, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

ALR. — Tax preparer’s liability to taxpayer in connection with preparation of tax return, 81 ALR3d 1119.

aration of tax returns for others, 81 ALR3d 1140.

Disciplinary action against attorney or accountant for misconduct related to prep-

Who is an “income tax return preparer” under 26 USCS § 7701(a)(36)?, 132 ALR Fed. 265.

48-7-4. Unlawful disregard of rules and regulations of commissioner in preparing returns under this chapter; penalty.

(a) It shall be unlawful for any person, with intent to evade the income tax imposed by this chapter, willfully to advise the preparation or presentation of a return with intentional disregard of rules and regulations of the commissioner.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100.00 nor more than \$500.00 or imprisoned for not more than six months, or both. (Ga. L. 1931, Ex. Sess., p. 24, § 50; Ga. L.

1931, p. 7, § 85; Code 1933, § 92-9913; Code 1933, § 91A-9932, enacted by Ga. L. 1978, p. 309, § 2.)

48-7-5. Evasion of income tax, penalty, interest, or other amount in excess of \$3,000.00.

Any person who willfully evades or defeats or willfully attempts to evade or defeat, in any manner, any income tax, penalty, interest, or other amount in excess of \$3,000.00 imposed under this chapter, including but not limited to failure to file a return or report, shall, in addition to any other criminal or civil penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000.00 in the case of an individual or not more than \$500,000.00 in the case of a corporation or imprisoned not less than one nor more than five years, or both. Conduct proscribed by this Code section shall be subject to punishment under this Code section notwithstanding the applicability to such conduct of any other provision of law. (Code 1981, § 48-7-5, enacted by Ga. L. 1987, p. 444, § 1.)

RESEARCH REFERENCES

ALR. — Construction and application of 26 USCA § 6015(b)(1)(C) requiring that spouse not know of understatement of tax arising from erroneous deduction, credit, or basis to obtain innocent spouse exemption from liability for tax, 154 ALR Fed. 233; 161 ALR Fed. 373.

Construction and application of 26 U.S.C.A. § 6015(b)(1)(C), requiring that spouse not know of omission of gross income from joint tax return to obtain innocent spouse exemption from liability for tax, 161 ALR Fed. 373.

48-7-6. License or registration extensions for National Guard members and reservists on active duty.

(a) Notwithstanding any provision of law to the contrary, any member of the National Guard or any reserve component of the armed services of the United States who serves on active duty for at least 90 consecutive days shall by operation of this subsection automatically be granted an extension, without fee charged for such extension, of any annual license or registration otherwise required under any other provision of law by the state or any agency, department, board, bureau, or commission of the state. Such extension shall continue until the otherwise regular expiration date which occurs in the year next succeeding the year in which such active duty ceases.

(b) Notwithstanding any provision of law to the contrary, any member of the National Guard or any reserve component of the United States who qualifies for the license or registration extension under subsection (a) of this Code section shall be exempt from any continuing education requirements during such automatic extension period.

(c) This Code section shall not apply to attorneys. (Code 1981, § 48-7-6, enacted by Ga. L. 2005, p. 220, § 1; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in subsections (a) and (b).

ARTICLE 2

IMPOSITION, RATE, AND COMPUTATION; EXEMPTIONS

Cross references. — Tax deduction for purchase of fluoride-removing device by person allergic to fluoridated water, § 12-5-175. Tax deductions and exemptions relating to making of student loans by Georgia Higher Education Assistance Corporation, § 20-3-283 et seq. Deduction for contributions made to Georgia Student Finance Authority, § 20-3-322. Provision that payments for relocation assistance shall not be considered income, § 22-4-13.

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Law reviews. — For note on the 1994 amendments of Code Sections 48-7-40 to 48-7-40.1 and enactment of Code Sections 48-7-40.2 to 48-7-40.6 of this article, see 11 Ga. St. U.L. Rev. 249 (1994).

RESEARCH REFERENCES

ALR. — Bond or warrant of governmental subdivision as subject of taxation or exemption, 26 ALR 547; 44 ALR 510.

Licensing tax on forwarding or local agency rendering services incidental to interstate shipments, 34 ALR 912.

Nature of interest of special partner for purpose of income tax, 45 ALR 1381.

Gains from unlawful business or transactions as subject of income tax, 51 ALR 1026; 166 ALR 891.

Year in which loss or bad debt must be charged in order to be allowed as a deduction from taxpayer's income, 55 ALR 1280; 67 ALR 1015; 121 ALR 697; 135 ALR 1430.

What is a personal service corporation within Internal Revenue Act, 59 ALR 1279.

Gift or trust for benefit of employees of corporation or business as within exemp-

tion or deduction provisions of succession tax or income tax law, 71 ALR 870.

Excise tax on corporations as factor in determining question as to discrimination against individuals in favor of corporations in respect of property or income tax upon former, 73 ALR 737.

Applicability, construction, and effect of provision of Income Tax Act excluding from income subject to tax the value of property acquired by gift, devise, bequest, or descent, 73 ALR 1536; 119 ALR 415.

Right of taxpayer to relief from his own errors in assessing his income tax or making out his income tax return, 80 ALR 377.

Liability for income tax in respect of amount of tax paid by another, 91 ALR 1270.

Interest on bonds or other obligations issued by municipalities or other political units of state as subject of state income

tax in absence of express exemption, 98 ALR 1346.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 ALR 943.

Right of employer to deduct, for income

tax purposes, premiums paid on insurance or annuity contracts for benefit of employees, 9 ALR2d 280.

Income tax: market value as ascribable to agreement to pay a life annuity to another for purpose of determining capital gain or loss, 12 ALR2d 589.

48-7-20. Individual tax rate; tax table; credit for withholding and other payments; applicability to estates and trusts.

(a) A tax is imposed upon every resident of this state with respect to the Georgia taxable net income of the taxpayer as defined in Code Section 48-7-27. A tax is imposed upon every nonresident with respect to such nonresident's Georgia taxable net income not otherwise exempted which is received by the taxpayer from services performed, property owned, proceeds of any lottery prize awarded by the Georgia Lottery Corporation, or from business carried on in this state. Except as otherwise provided in this chapter, the tax imposed by this subsection shall be levied, collected, and paid annually.

(b)(1) The tax imposed pursuant to subsection (a) of this Code section shall be computed in accordance with the following tables:

SINGLE PERSON

If Georgia Taxable Net Income Is:		The Tax Is:
Not over \$750.00		1%
Over \$750.00 but not over \$2,250.00		\$7.50 plus 2% of amount over \$750.00
Over \$2,250.00 but not over \$3,750.00		\$37.50 plus 3% of amount over \$2,250.00
Over \$3,750.00 but not over \$5,250.00		\$82.50 plus 4% of amount over \$3,750.00
Over \$5,250.00 but not over \$7,000.00		\$142.50 plus 5% of amount over \$5,250.00
Over \$7,000.00		\$230.00 plus 6% of amount over \$7,000.00

MARRIED PERSON FILING A SEPARATE RETURN

If Georgia Taxable Net Income Is:		The Tax Is:
Not over \$500.00		1%
Over \$500.00 but not over \$1,500.00	\$5.00 plus 2% of amount over \$500.00	
Over \$1,500.00 but not over \$2,500.00	\$25.00 plus 3% of amount over \$1,500.00	
Over \$2,500.00 but not over \$3,500.00	\$55.00 plus 4% of amount over \$2,500.00	
Over \$3,500.00 but not over \$5,000.00	\$95.00 plus 5% of amount over \$3,500.00	
Over \$5,000.00	\$170.00 plus 6% of amount over \$5,000.00	

HEAD OF HOUSEHOLD AND MARRIED PERSONS
FILING A JOINT RETURN

If Georgia Taxable Net Income Is:		The Tax Is:
Not over \$1,000.00		1%
Over \$1,000.00 but not over \$3,000.00	\$10.00 plus 2% of amount over \$1,000.00	
Over \$3,000.00 but not over \$5,000.00	\$50.00 plus 3% of amount over \$3,000.00	
Over \$5,000.00 but not over \$7,000.00	\$110.00 plus 4% of amount over \$5,000.00	
Over \$7,000.00 but not over \$10,000.00	\$190.00 plus 5% of amount over \$7,000.00	
Over \$10,000.00	\$340.00 plus 6% of amount over \$10,000.00	

(2) To facilitate the computation of the tax by those taxpayers whose federal adjusted gross income together with the adjustments set out in Code Section 48-7-27 for use in arriving at Georgia taxable net income is less than \$10,000.00, the commissioner may construct tax tables which may be used by the taxpayers at their option. The tax shown to be due by the tables shall be computed on the bases of the standard deduction and the tax rates specified in paragraph (1) of this subsection. Insofar as practicable, the tables shall produce a tax approximately equivalent to the tax imposed by paragraph (1) of this subsection.

(c) The amount deducted and withheld by an employer from the wages of an employee pursuant to Article 5 of this chapter, relating to current income tax payments, shall be allowed the employee as a credit against the tax imposed by this Code section. Amounts paid by an individual as estimated tax under Article 5 of this chapter shall constitute payments on account of the tax imposed by this Code section. The amount withheld or paid during any calendar year shall be allowed as a credit or payment for the taxable year beginning in the calendar year in which the amount is withheld or paid.

(d) The tax imposed by this Code section applies to the Georgia taxable net income of estates and trusts, which shall be computed in the same manner as in the case of a single individual. The tax shall be computed on the Georgia taxable net income and shall be paid by the fiduciary. (Ga. L. 1931, Ex. Sess., p. 3, § 24; Code 1933, § 92-3101; Ga. L. 1937, p. 109, § 2; Ga. L. 1937-38, Ex. Sess., p. 150, § 2; Ga. L. 1955, Ex. Sess., p. 27, § 1; Ga. L. 1960, p. 1005, § 1; Ga. L. 1971, p. 605, §§ 1, 2; Ga. L. 1975, p. 857, § 1; Code 1933, § 91A-3601, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 62; Ga. L. 1987, p. 191, § 2; Ga. L. 1994, p. 597, § 2.)

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were

not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1994, p. 597, § 4, not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 1994.

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

For comment on *Forrester v. Culpepper*,

194 Ga. 744, 22 S.E.2d 595 (1942), see 6 Ga. B.J. 155 (1943).

JUDICIAL DECISIONS

Constitutionality of income tax rates. — Georgia Laws 1929, p. 92 (see O.C.G.A. Ch. 7, T. 48) does not violate Ga. Const. 1877, Art. VII, Sec. II, Para. I (see Ga. Const. 1983, Art. VII, Sec. I, Para. III), which declared that all taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, for the reason that income is distinguished from property from which income flows, with the result that income was not property within the meaning of this provision, and did not need to be levied ad valorem. *Green & Milam v. State Revenue Comm'n*, 188 Ga. 442, 4 S.E.2d 144 (1939).

Legislative intent as to income earned outside state before becoming resident. — Former Code 1933, §§ 92-3002, 92-3101, 92-3112, 92-3302 (see O.C.G.A. §§ 48-7-1, 48-7-20, and 48-7-30), when construed together, authorize if the statutes do not compel the interpretation that the legislature did not intend to impose a tax upon such portion of the income of a resident as was derived by the resident from sources outside the

state before the date on which the individual became a resident of this state. *Forrester v. Culpepper*, 194 Ga. 744, 22 S.E.2d 595 (1942); commented on in 6 Ga. B.J. 155 (1943).

Income earned by a nonresident but received after becoming a resident. — Income earned by a cash basis taxpayer outside the state before becoming a resident is taxable under former Code 1933, Ch. 92-31 (see O.C.G.A. Ch. 7, T. 48) if actually or constructively received after becoming a resident. *Rogers v. Chilivis*, 141 Ga. App. 407, 233 S.E.2d 451, cert. denied, 434 U.S. 891, 98 S. Ct. 266, 54 L. Ed. 2d 176 (1977).

Application to sentencing guidelines. — In determining the amount of the tax loss for purposes of calculating the defendant's offense level for tax evasion under U.S. Sentencing Guidelines Manual § 2T1.1(c)(1), a court took into account the defendant's state tax liability in accordance with the six percent rate specified in O.C.G.A. § 48-7-20 for individual taxpayers. *United States v. Campbell*, No. 1:04-CR-0424-RWS, 2006 U.S. Dist. LEXIS 96565 (N.D. Ga. June 15, 2006), *aff'd*, 491 F.3d 1306 (11th Cir. 2007).

OPINIONS OF THE ATTORNEY GENERAL

Resident must pay tax on income earned outside state. — Resident of this state is required to pay state income taxes, notwithstanding the fact that the resident's income is earned in another state. 1952-53 Op. Att'y Gen. p. 443.

Becoming legal resident or domiciliary of another state. — To become a legal resident or domiciliary of another state one must not only reside there but

must do so with the intention of giving up one's legal residence or domicile in Georgia. 1969 Op. Att'y Gen. No. 69-171.

Payments by check, tendered by municipal corporation to municipal officers and employees for unused sick leave, are, if the payments are legal, income and subject to taxation. 1971 Op. Att'y Gen. No. U71-16.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 380.

C.J.S. — 85 C.J.S., Taxation, §§ 1832, 1833.

ALR. — Constitutionality of provisions

of income tax law as regards income of husband and wife, 78 ALR 352.

Deductions in respect of leasehold in computing income tax, 82 ALR 332.

Inhabitancy or residence, within provi-

sions of income tax law as equivalent of domicile, 82 ALR 982.

Income tax in respect of exchange of properties, 102 ALR 6.

Income tax in respect of salaries of public officers and employees, 114 ALR 1190.

When dividends on corporate stock become taxable as income to a taxpayer making his return on a cash basis, 120 ALR 1280; 143 ALR 596; 158 ALR 1432; 167 ALR 303.

Income tax in respect of salaries of public officers and employees, 120 ALR 1477; 122 ALR 1393; 125 ALR 1421.

Computation of income tax of husband

and wife as affected by the fact that they make a joint return, 121 ALR 650; 131 ALR 984.

Computation of income tax as affected by fact that taxpayer was domiciled within state for only part of taxable year, 126 ALR 455.

Liability of settlor, in absence of express provision in income tax law, for income tax on income of revocable trust or on trust income distributable to him, 159 ALR 100.

Constitutionality, construction, and application provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 42 ALR2d 797.

48-7-21. Taxation of corporations.

(a) Every domestic corporation and every foreign corporation shall pay annually an income tax equivalent to 6 percent of its Georgia taxable net income. Georgia taxable net income of a corporation shall be the corporation's taxable income from property owned or from business done in this state. A corporation's taxable income from property owned or from business done in this state shall consist of the corporation's taxable income as defined in the Internal Revenue Code of 1986, with the adjustments provided for in subsection (b) of this Code section and allocated and apportioned as provided in Code Section 48-7-31.

(b)(1)(A) When interest income is derived from obligations of any state or political subdivision except this state and political subdivisions of this state, the interest income shall be added to taxable income to the extent that the interest income is not included in gross income for federal income tax purposes. Interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States which by the laws of the United States are exempt from federal income tax but not from state income tax shall also be added to taxable income.

(B) There shall be subtracted from taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent such interest or dividends are includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. There shall also be subtracted from taxable income any income derived from the authorized activities of a domestic international banking facility operating pursuant to the provisions of Article 5A of Chapter 1 of Title 7, the "Domestic International Banking Facility Act," and any income arising from the conduct of

a banking business with persons or entities located outside the United States, its territories, or possessions. Any amount subtracted pursuant to this subparagraph shall be reduced by any interest expenses directly or indirectly attributable to the production of the interest or dividend income.

(2) There shall be added to taxable income any taxes on, or measured by, net income or net profits paid or accrued within the taxable year imposed by the authority of the United States or any foreign country, by any state except the State of Georgia, or by any territory, county, school district, municipality, or other tax subdivision of any state, territory, or foreign country to the extent such taxes are deducted in determining federal taxable income.

(3) No portion of any deductions or losses which occurred in a year in which the taxpayer was not subject to taxation in this state including, but not limited to, net operating losses may be deducted in any tax year. When the federal adjusted gross income or net income of a corporation includes such deductions or losses, an adjustment deleting them shall be made under rules established by the commissioner. The provisions of this subsection shall not prohibit the carry-over of any deductions or losses including, but not limited to, net operating losses of any taxpayer which were incurred in a year or years in which the taxpayer was subject to methods of taxation in this state other than the corporate income tax.

(4) Income, losses, and deductions previously used in computing Georgia taxable income shall not again be used in computing Georgia taxable income. The commissioner shall provide for needed adjustments by regulation.

(5) All elections under Section 338 of the Internal Revenue Code of 1986 shall also apply under this article.

(6) This article shall not be construed to repeal any tax exemptions contained in other laws of this state not referred to in this article. Those exemptions and the exemptions provided for by federal law and treaty shall be deducted on forms provided by the commissioner.

(7) All elections made by corporate taxpayers under the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986 shall also apply under this article except elections involving consolidated corporate returns and Subchapter "S" elections which shall be treated as follows:

(A)(i) Affiliated corporations which file a consolidated federal income tax return must file separate income tax returns with this state unless they have prior approval or have been requested to file a consolidated return by the department. The commis-

sioner shall by regulation provide the time period within which the permission must be requested. A request for permission beyond such time period will not be considered and will result in the filing of separate income tax returns for the applicable year.

(ii) No depository financial institution shall be deprived of the benefit of any exemption, deduction, or credit authorized by this title as a consequence of its election to file otherwise lawful consolidated returns with its parent organization or any corporate subsidiaries with respect to any state or local tax levied against such depository financial institution as a result of this title. As used in this division, the term:

(I) "Bank" means any financial institution chartered under the laws of this state or under the laws of the United States and domiciled in this state which is authorized to receive deposits in this state and which has a corporate structure authorizing the issuance of capital stock.

(II) "Depository financial institution" means a "bank" or a "savings and loan association."

(III) "Savings and loan association" means any financial institution, other than a credit union, chartered under the laws of this state or under the laws of the United States and domiciled in this state which is authorized to receive deposits in this state and which has a mutual corporate form;

(B) Subchapter "S" elections apply only if all stockholders are subject to tax in this state on their portion of the corporate income. If all nonresident stockholders pay the Georgia income tax on their portion of the corporate income, the election shall be allowed.

(8) There shall be subtracted from taxable income dividends received by:

(A) A corporation from sources outside the United States as defined in the Internal Revenue Code of 1986. For purposes of this subparagraph, dividends received by a corporation from sources outside of the United States shall include amounts treated as a dividend and income deemed to have been received under provisions of the Internal Revenue Code of 1986 by such corporation if such amounts could have been subtracted from taxable income under this paragraph, had such amounts actually been received. Amounts to be subtracted under this subparagraph shall include the following, as defined by the Internal Revenue Code of 1986:

(i) Qualified electing fund income;

(ii) Subpart F income; and

(iii) Income attributable to an increase in United States property by a controlled foreign corporation.

The amount subtracted under this subparagraph shall be reduced by any expenses directly attributable to the dividend income; and

(B) Corporations from affiliated corporations within the United States, when the corporation receiving the dividends is engaged in business in this state and is subject to the payment of taxes under the income tax laws of this state, to the extent that the dividends have been included in net income under this Code section. Dividends from affiliates shall be reduced by any expenses directly attributable to the dividend income.

(9) Where a corporation's salary and wage deductions are reduced in computing federal taxable income because the corporation has taken a federal jobs tax credit which required, as a condition to using the federal jobs tax credit, the elimination of salary and wage deductions, the eliminated salary and wage deductions shall be subtracted from taxable income.

(10) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.3.

(10.1) Net operating losses for corporations shall be treated as follows:

(A) For any taxable year in which the taxpayer takes a federal net operating loss deduction on its federal income tax return, the amount of such deduction shall be added back to federal taxable income, and Georgia taxable net income for such taxable year shall be computed from the taxpayer's federal taxable income as so adjusted. There shall be allowed as a separate deduction from Georgia taxable net income so computed an amount equal to the aggregate of the Georgia net operating loss carryovers to such year, plus the Georgia net operating loss carrybacks to such year;

(B) The Georgia net operating loss for such taxable year shall be computed by making the adjustments to federal taxable income required by this article and in the case of corporations doing business both within and outside Georgia, by apportioning and allocating to Georgia, as provided in Code Section 48-7-31, only the amount of the loss attributable to operations within Georgia. The term "Georgia net operating loss" shall mean the loss computed as provided in this paragraph. In the event the net Georgia adjustments completely offset a federal net operating loss, there shall be no Georgia net operating loss for the taxable year, and any excess of net Georgia adjustments over the federal net operating loss shall constitute Georgia taxable net income after any such excess has

been allocated and apportioned to Georgia as provided in Code Section 48-7-31. The procedural sequence of taxable years to which a Georgia net operating loss may be carried back or carried over, and the number of years for which a net operating loss may be carried back or carried over, shall be the same as provided in the Internal Revenue Code. The terms "Georgia net operating loss carryback" and "Georgia net operating loss carryover" shall mean the Georgia net operating loss for the applicable year carried back or carried over in the manner and for the number of years as provided in this paragraph;

(C) In the event the taxpayer elects to forgo the carryback period for the federal net operating loss as allowed under the Internal Revenue Code, the taxpayer shall also forgo the carryback period for Georgia purposes. If the taxpayer does not elect to forgo the carryback period for the federal net operating loss, the election to forgo the net operating loss period shall not be allowed for Georgia purposes. If the taxpayer does not have a federal net operating loss, the taxpayer may make an irrevocable election to forgo the carryback period for the Georgia net operating loss, provided that an affirmative statement is attached to the Georgia return for the year of the loss. Such election must be made on or before the due date for filing the income tax return for the taxable year wherein the loss was incurred, including any extensions which have been granted;

(D) The provisions of Sections 108, 381, 382, and 384 of the Internal Revenue Code of 1986, as amended, as they relate to net operating losses also apply for Georgia purposes. The commissioner shall by regulation provide the method of determining how such sections apply;

(E) In the event a taxpayer is entitled to a refund of income taxes by reason of a net operating loss carryback, a claim for such refund must be filed within three years after the due date for filing the income tax return for the taxable year wherein the loss was incurred, including any extensions which have been granted. Such tax refund shall be deemed to have been erroneously assessed and collected, and shall be paid under the provisions of Code Section 48-2-35; provided, however, that no interest shall accrue or be paid for any period prior to the close of the taxable year in which such net operating loss arises and no interest shall be paid if the claim for refund is processed within 90 days from the last day of the month in which the claim for such refund is filed; and

(F) The commissioner shall have the authority to promulgate regulations regarding net operating losses with respect to this paragraph and with respect to consolidated return net operating losses.

(11) There shall be subtracted from taxable income a portion of qualified payments to minority subcontractors, as provided in Code Section 48-7-38.

(12) Georgia taxable income shall, if the taxpayer so elects, be adjusted with respect to federal depreciation deductions as provided in Code Section 48-7-39.

(13) If the taxpayer claims the tax credit provided for in subsection (d) of Code Section 48-7-40.6 with respect to qualified child care property, Georgia taxable income shall be increased by any depreciation deductions attributable to such property to the extent such deductions are used in determining federal taxable income.

(14) There shall be subtracted from taxable income the deduction provided and allowed by Section 179 of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in the corporation's taxable income, as defined under the Internal Revenue Code of 1986.

(15) Georgia taxable income shall be increased by the amount of the payments, compensation, or other economic benefit disallowed by Code Section 48-7-21.1.

(16) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.4. (Ga. L. 1931, Ex. Sess., p. 26, § 4; Code 1933, § 92-3102; Ga. L. 1935, p. 121, § 1; Ga. L. 1937, p. 109, § 3; Ga. L. 1937-38, Ex. Sess., p. 150, § 3; Ga. L. 1949, Ex. Sess., p. 18, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 625, § 1; Ga. L. 1955, Ex. Sess., p. 27, § 2; Ga. L. 1964, p. 67, § 1; Ga. L. 1969, p. 114, § 1; Ga. L. 1973, p. 924, § 3; Ga. L. 1976, p. 646, § 1; Ga. L. 1976, p. 980, § 1; Ga. L. 1977, p. 1133, § 2; Ga. L. 1979, p. 888, § 1; Code 1933, § 91A-3602, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 63; Ga. L. 1979, p. 888, § 3; Ga. L. 1982, p. 3, § 48; Ga. L. 1983, p. 1350, § 11; Ga. L. 1984, p. 22, § 48; Ga. L. 1984, p. 1644, § 1; Ga. L. 1987, p. 191, § 2; Ga. L. 1988, p. 13, § 48; Ga. L. 1993, p. 1649, § 1; Ga. L. 1996, p. 117, § 8; Ga. L. 1996, p. 130, § 8; Ga. L. 1996, p. 181, § 6; Ga. L. 1999, p. 13, § 1; Ga. L. 2000, p. 1445, § 1; Ga. L. 2005, p. 30, § 2/HB 191; Ga. L. 2005, p. 157, § 1/HB 282; Ga. L. 2005, p. 159, §§ 8-10, 11/HB 488; Ga. L. 2007, p. 271, § 1/SB 184; Ga. L. 2008, p. 898, § 4/HB 1151; Ga. L. 2009, p. 796, § 1/HB 379; Ga. L. 2010, p. 895, § 2/HB 1138.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, paragraph (b)(10) of this Code section, as enacted by Ga. L. 2005, p. 159, § 11, was redesignated as paragraph (b)(10.1).

Editor's notes. — Ga. L. 1984, p. 1644, § 4, not codified by the General Assembly, provided that that Act would apply to

taxable years beginning on or after January 1, 1985.

Ga. L. 1983, p. 1350, § 15, not codified by the General Assembly, effective January 1, 1984, provides that, should subsection (e) of Code Section 48-6-93 or paragraph (11) of subsection (b) of Code Section 48-7-21 be declared invalid or un-

constitutional, it is the intent of the General Assembly that the entire Act be held invalid and that the method of taxation affected by the Act revert to the method in effect prior to January 1, 1984.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1996, p. 117, § 9, not codified by the General Assembly, provides that the Act shall not repeal any provision of Ga. L. 1996, p. 130 if Ga. L. 1996, p. 130 is passed at the 1996 regular session of the General Assembly, becomes law, and becomes effective. Ga. L. 1996, p. 130 was passed at the 1996 Session and became effective January 1, 1997.

Ga. L. 1996, p. 130, § 9, not codified by the General Assembly, provided that the 1996 amendment became effective on January 1, 1997, and shall be applicable to all taxable years beginning on or after January 1, 1996, upon the ratification of House Resolution 734 at the November, 1996, general election. House Resolution 734 was ratified in 1996.

Ga. L. 1996, p. 130, § 9, not codified by the General Assembly, provides, in part, that the provisions of the Act shall not repeal but shall supersede and control over any conflicting provisions of any other Act enacted at the 1996 regular session, including, but not limited to, Ga. L. 1996, p. 117.

Ga. L. 1996, p. 181, § 10, not codified by the General Assembly, provides for a

study and report by the state revenue commissioner regarding the effect of the Act on revenue received by the state, counties, and cities in 1997 and 1998 from the tax imposed by Article 4 of Chapter 6 of Title 48 of the Code.

Ga. L. 2000, p. 1445, § 5, not codified by the General Assembly, provides that this Act shall apply to all taxable years beginning on or after January 1, 2001.

Ga. L. 2005, p. 30, § 7(a)/HB 191, not codified by the General Assembly, provides that the 2005 amendment to paragraph (b)(10) shall be applicable to all taxable years beginning on or after January 1, 2006.

Ga. L. 2005, p. 157, § 4/HB 282, not codified by the General Assembly, provides that this Act shall apply to all taxable years beginning on or after January 1, 2005.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2005, p. 159, § 27(c)/HB 488, not codified by the General Assembly, provides that the 2005 amendments to division (b)(1)(B) and (b)(10.1) shall apply to all taxable years beginning on or after January 1, 2005.

Ga. L. 2005, p. 159, § 27(h)/HB 488, not codified by the General Assembly, provides that the 2005 amendment to paragraph (b)(5) shall apply to all taxable years beginning on or after January 1, 2004.

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2009, p. 796, § 4/HB 379, not codified by the General Assembly, provides, in part, that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2010.

Ga. L. 2010, p. 895, § 4(c)/HB 1138, not codified by the General Assembly, provides that the 2010 amendment shall apply with respect to stock purchases and sales occurring on or after June 3, 2010.

U.S. Code. — The Internal Revenue Code, referred to throughout this Code section, is codified as 26 U.S.C. § 1 et seq.

Subchapter "S" of the Internal Revenue Code, referred to in paragraph (b)(7) of this Code section, is codified at 26 U.S.C. § 1361 et seq.

Administrative rules and regulations. — Taxation of corporations, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, § 560-7-3-.06.

Law reviews. — For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973). For article, "Primary Tax Incentives for Industrial Investment in the Southeastern United States," see 25 Emory L. J. 789 (1976). For article surveying Georgia cases in the area of business associations from June 1977 through May 1978, see 30 Mercer L. Rev. 1 (1978). For article, "Common State Tax Pitfalls in the Acquisition or Disposition of Businesses in Georgia," see 22 Ga. St. B.J. 82 (1985). For article, "Issues and Opportunities Under Georgia's Updated Income Tax Provi-

sions," see 25 Ga. St. B.J. 144 (1989). For article, "Post-Creation Checklist for Georgia Business Entities," see 9 Ga. St. B.J. 24 (2004). For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010). For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

For note on 1993 amendment of this Code section, see 10 Ga. St. U.L. Rev. 218 (1993). For review of 1996 revenue and taxation legislation, see 13 Ga. St. U.L. Rev. 294 (1996).

For comment on *Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421 (1959), upholding constitutionality of state net income tax levied on revenues of foreign corporation derived from interstate commerce where tax is "fairly apportioned," see 22 Ga. B.J. 107 (1959).

JUDICIAL DECISIONS

Constitutionality of income tax. — Right to impose an income tax is an inherent right of the people and there is nothing in the Constitution of Georgia which denies to the General Assembly the power to impose an income tax if the tax is levied without infringing some provision of that instrument. *Owens-Illinois Glass Co. v. Oxford*, 216 Ga. 316, 116 S.E.2d 293 (1960).

Income tax not violation of due process when corporation accepts and uses state services. — Having accepted and utilized valuable state services, a corporation cannot consistently contend or successfully assert that the corporation's property, the taxes collected, has been taken from the corporation in violation of the due process clause of the Constitution of Georgia. *Owens-Illinois Glass Co. v. Oxford*, 216 Ga. 316, 116 S.E.2d 293 (1960).

Legislative intent. — By this section, the General Assembly clearly and plainly showed the legislature's intention to tax

the activities or transactions which every corporation carries on within this state for the purpose of financial profit or gain. *Owens-Illinois Glass Co. v. Oxford*, 216 Ga. 316, 116 S.E.2d 293 (1960).

Exemptions to be strictly construed in state's favor. — Any and all tax exemptions must be strictly construed, and unless the language clearly grants the exemption, it is the duty of the court to rule in favor of the state and against the corporation. *Thompson v. Atlantic Coast Line R.R.*, 200 Ga. 856, 38 S.E.2d 774 (1946), *aff'd sub nom. Atlantic Coast Line R.R. v. Phillips*, 332 U.S. 168, 67 S. Ct. 1584, 91 L. Ed. 1977 (1947).

Taxation of foreign corporations. — Foreign corporation is not permitted to engage in income producing activities or transactions within this state in competition with domestic corporations, and at the same time escape payment of income tax to the very government which makes it possible for the corporation to earn profits from such activities or transac-

tions. *Owens-Illinois Glass Co. v. Oxford*, 216 Ga. 316, 116 S.E.2d 293 (1960).

State income taxation of interstate operations of a foreign corporation.

— Net income from the interstate operations of a foreign corporation may be subjected to state taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing state forming a sufficient nexus to support the taxation. *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421 (1959).

Sale of whiskey by unlicensed non-resident. — It is illogical and unreasonable to contend that sale of whiskey in this state by an unlicensed nonresident upon orders taken in this state and approved by the state revenue commissioner in conformity with regulations is doing business in this state and is subject to income tax on the income arising therefrom. *Redwine v. Schenley Indus., Inc.*, 210 Ga. 769, 83 S.E.2d 16 (1954).

Obligations and duties of domesticated foreign corporations. — Foreign corporation domesticated under the laws of this state becomes subject to the same obligations, duties, liabilities, and disabilities as if originally created under the laws of Georgia. *Montag Bros. v. State Revenue Comm'n*, 50 Ga. App. 660, 179 S.E. 563 (1935), *aff'd*, 182 Ga. 568, 186 S.E. 558 (1936).

Law does not purport to provide a formula for deducting the cost of earning interest. — Method used in arriving at such cost will and must be examined in the light and circumstances of each case. Any fair means of arriving at such costs is available. *State Revenue Comm'n v. Carson Naval Stores Co.*, 63 Ga. App. 540, 11 S.E.2d 678 (1940).

Construction of definition of "dividend" with other provisions. — In light of the legislative history of former Code 1933, § 92-3002 and *Oxford v. Carter*, 216 Ga. 821, 120 S.E.2d 298 (1961), the Court of Appeals was not willing to say that the term "dividend" as used in paragraph (b)(10) of former Code 1933, § 92-3102 incorporated the definition of "dividend" in former Code 1933, § 92-3002 or that "dividend" as used in

former Code 1933, § 92-3102 (see O.C.G.A. § 48-7-21) clearly and distinctly included a final distribution in liquidation. *Chilivis v. Cleveland Elec. Co.*, 142 Ga. App. 751, 236 S.E.2d 872 (1977).

Distribution of earnings and profits does not qualify as dividend. — Under this section, it is the Internal Revenue Code of 1954 definition of dividends received from sources outside the United States, not the treatment by the federal tax authorities, that is controlling. Under the Internal Revenue Code of 1954, the distribution of earnings and profits does not qualify as a dividend. *Chilivis v. Cleveland Elec. Co.*, 142 Ga. App. 751, 236 S.E.2d 872 (1977).

Constitutional provision revoking perpetual corporate charter is void.

— When a perpetual corporate charter granted by the General Assembly confers tax exemptions upon the corporation, the exemption is irrevocable. Accordingly, former Ga. Const. 1945, Art. I, Sec. III, Para. III (see Ga. Const. 1983, Art. I, Sec. I, Para. X) purporting to revoke such charter provisions, is void and of no effect. *Thompson v. Atlantic Coast Line R.R.*, 200 Ga. 856, 38 S.E.2d 774 (1946), *aff'd sub nom.* *Atlantic Coast Line R.R. v. Phillips*, 332 U.S. 168, 67 S. Ct. 1584, 91 L. Ed. 1977 (1947).

Effect of charter provision limiting tax on stock of corporation. — Charter provision which limits the tax on the stock of the corporation to a certain percentage of the net proceeds of their investments is a property tax and constitutes no bar to the collection by the state of an income tax from a lessee of the corporation on the lessee's net income derived from the use of the corporate property on which the charter thus limits the property tax. *Thompson v. Atlantic Coast Line R.R.*, 200 Ga. 856, 38 S.E.2d 774 (1946), *aff'd sub nom.* *Atlantic Coast Line R.R. v. Phillips*, 332 U.S. 168, 67 S. Ct. 1584, 91 L. Ed. 1977 (1947).

Effect of tax exemption found in charter enacted before existence of income tax. — When there existed in Georgia no corporate income tax law at the time a corporate charter exemption was enacted and in the exemption clause it was expressly stated that the limitation

there provided was upon the taxation of stock of the corporation, the General Assembly in enacting this exemption clause did not intend to include exemption from an income tax. Such limitation or exemption was not necessary because no income tax, under the law as the law then existed, would have been exacted of the corporation. *Thompson v. Atlantic Coast Line R.R.*, 200 Ga. 856, 38 S.E.2d 774 (1946), *aff'd sub nom. Atlantic Coast Line R.R. v. Phillips*, 332 U.S. 168, 67 S. Ct. 1584, 91 L. Ed. 1977 (1947).

Research tax credit. — Trial court erred in finding invalid a regulation which interpreted a research tax credit codified in a statute; the regulation's requirement

that a business enterprise have a positive state taxable net income for each of the preceding three years in order to be eligible for the tax credit was authorized by statute and was reasonable because the regulation reflected the legislature's intent that research activities be increased, which was most likely to occur when a business enterprise was able to generate income through the enterprise's activities rather than when a business had a negative income or, in other words, a net operating loss. *Ga. Dep't of Revenue v. Ga. Chemistry Council, Inc.*, 270 Ga. App. 615, 607 S.E.2d 207 (2004).

Cited in *Graham v. Hanna*, 297 Ga. App. 542, 677 S.E.2d 686 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 92-3102, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

What activity constitutes doing business in this state. — When an out-of-state lending institution intermittently merely purchases from a Georgia real estate and mortgage company notes secured by mortgages on Georgia real estate, such activity is not enough to constitute doing business in this state for purposes of income tax liability under former Code 1933 §§ 92-3102 and 92-3113 (see

O.C.G.A. §§ 48-7-21 and 48-7-31). 1960-61 Op. Att'y Gen. p. 501 (decided under former Code 1933, § 92-3102).

When a foreign corporation merely qualifies as a fiduciary or merely holds a fiduciary title to property located in this state, and engages in no other activity in this state with respect to such property, it is not engaged in sufficient activity in this state to constitute its personally doing business in this state. Such corporation, as a fiduciary, would have an income tax liability on account of income or gains derived from such property. 1960-61 Op. Att'y Gen. p. 497 (decided under former Code 1933, § 92-3102).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 369, 403, 406 et seq., 420.

Am. Jur. Proof of Facts. — Business Bad Debt, 5 POF2d 89.

C.J.S. — 85 C.J.S., Taxation, §§ 1825 et seq., 1854 et seq.

ALR. — Deduction of salaries in computing excise or income tax of corporations, 15 ALR 1316; 145 ALR 834.

Constitutionality of taxing statute which refuses to corporation deduction of credits allowed to individual taxpayer, 42 ALR 1049.

Income tax: deduction for loss or depreciation of good will, 49 ALR 469.

Deduction on account of exempt securities in taxation of corporations or their shareholders, 57 ALR 899; 65 ALR 878.

What is a personal service corporation within Internal Revenue Act, 59 ALR 1279.

Deduction on account of exempt securities in taxation of corporations or their shareholders, 65 ALR 878.

Deduction of salaries in computing excise or income tax on corporations, 68 ALR 705; 145 ALR 834.

Income tax: deductibility as business expense of contributions by corporation for benevolent, charitable, or religious purposes, 68 ALR 742; 111 ALR 1226.

Constitutionality of tax on corporations in nature of, or purporting to be, excise or privilege tax measured by income or receipts, 71 ALR 256.

Deduction of fixed periodical percentage ("straight-line method") as proper method of determining depreciation for purposes of property or income taxes, 71 ALR 971.

"Business situs" for purposes of property taxation of intangibles in state other than domicile of owner, 76 ALR 806; 143 ALR 361.

Discrimination by state against foreign corporations in imposition of taxes and license fees, 77 ALR 1490.

Taxation of insurance reserves, 78 ALR 562.

Building and loan associations as within contemplation of constitutional or statutory provisions relating to taxation of corporation or stockholders, 86 ALR 826.

What amounts to "reorganization" of corporation within income tax statutes, 97 ALR 1359; 173 ALR 912.

Holding companies as within contemplation of statutes taxing franchises or property of certain classes of corporations, 98 ALR 1511.

Subjection to public supervision because of public service nature of business as basis of classification for purposes of taxation, 99 ALR 1164.

Right of bank in computing income tax to deduction corresponding to amount which it has been required by banking authorities to write down or charge off in respect of securities held by it, 100 ALR 702.

State excise, privilege, or franchise tax upon foreign corporation as affected by commerce clause, 105 ALR 11; 139 ALR 950.

Premium or discount at which a corporation issues or sells, or purchases or retires, its stock, bonds, or other obligations as income, or as deductible in computing income tax of corporation, 112 ALR 186.

Tax on corporations as affected by fact that corporation is not actually engaged in or carrying on business for which it was incorporated, 124 ALR 1109.

Transactions between affiliated corporations as basis of "bad debt" deduction in computing income tax or corporate franchise tax, 128 ALR 1251.

State income tax in respect of business that extends into other states, 130 ALR 1183.

Express limitations on deduction of interest paid to stockholders or their families, in computing state income tax or franchise tax of corporation, 140 ALR 1350.

Validity and construction of state statutes as applied to the taxation of income derived from dividends on stock of foreign corporations, 143 ALR 147.

Constitutionality, construction, and application of privilege dividend tax, 146 ALR 1214.

Stock contemplated by statute imposing tax upon, or measuring it by, capital stock, 153 ALR 693.

Meaning of association or joint-stock company within statutes taxing associations or joint-stock companies as corporations ("Massachusetts" or business trusts), 166 ALR 1461.

Income of subsidiary as taxable to it or to parent corporation, 10 ALR2d 576.

Constitutionality, construction, and application provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 42 ALR2d 797.

Validity, under federal Constitution, of state tax on, or measured by, income of foreign corporation, 67 ALR2d 1322.

Reasonableness of compensation paid to officers or employees, so as to warrant deduction thereof in computing employer's income tax, 10 ALR3d 125.

Construction and application of state corporate income tax statutes allowing net operation loss deductions, 33 ALR5th 509.

State income tax treatment of intangible holding companies, 11 ALR6th 543.

State corporate income taxation of foreign dividends, 17 ALR6th 623.

48-7-21.1. Definitions; compensation paid by taxpayer disallowed as business expense; applicability.

(a) As used in this Code section, the term:

(1) "Authorized employee" means any individual whose hiring for employment or continuing employment in the United States does not violate the provisions of 8 U.S.C. Section 1324a.

(2) "Basic pilot program" shall mean the electronic verification of a work authorization program of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, P. L. 104-208, Division C, Section 1324a note, and operated by the United States Department of Homeland Security.

(3) "Labor services" means the physical performance of services in this state.

(b) On or after January 1, 2008, no payment or compensation or other remuneration, including but not limited to wages, salaries, bonuses, benefits, in-kind exchanges, expenses, or any other economic benefit, paid for labor services to an individual totaling \$600.00 or more in a taxable year, may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer unless such individual is an authorized employee. The provisions of this subsection shall apply whether or not an Internal Revenue Service Form 1099 or Form W-2 is issued in conjunction with such payments, compensation, or other remuneration.

(c) This Code section shall not apply to any business which:

(1) Has enrolled and participates in the basic pilot program; or

(2) Is exempt from compliance with federal employment verification procedures under federal law which makes the employment of unauthorized aliens unlawful.

(d) This Code section shall not apply to any individual hired by the taxpayer prior to January 1, 2008.

(e) This Code section shall not apply to any taxpayer where the individual being paid is not directly compensated or employed by said taxpayer.

(f) This Code section shall not apply to payments, compensation, or other remuneration paid for labor services to any individual who holds and presents to the taxpayer a valid license or identification card issued by the Georgia Department of Driver Services.

(g) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and

effectuate this Code section. (Code 1981, § 48-7-21.1, enacted by Ga. L. 2006, p. 105, § 7/SB 529; Ga. L. 2007, p. 271, § 2/SB 184.)

Editor's notes. — Ga. L. 2006, p. 105, § 1/SB 529, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Security and Immigration Compliance Act.' All requirements of this Act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law."

Law reviews. — For article on 2006

enactment of this Code section, see 23 Ga. St. U.L. Rev. 247 (2006). For annual survey of labor and employment law, see 58 Mercer L. Rev. 211 (2006). For article, "The Georgia Security and Immigration Compliance Act: Comprehensive Immigration Reform in Georgia — 'Think Globally ... Act Locally'," see 13 Ga. St. B.J. 14 (2007).

48-7-22. Taxation of fiduciaries; rate; taxable net income of estate or trust; exemptions; computation of net income; when taxable year of beneficiary differs from that of estate or trust; tax as charge against estate or trust.

(a) The tax imposed by this chapter shall be:

(1) Imposed upon resident fiduciaries and upon nonresident fiduciaries:

(A) Receiving income from business done in this state;

(B) Managing funds or property located in this state; or

(C) Managing funds or property for the benefit of a resident of this state;

(2) Imposed upon fiduciaries subject to the tax at the rates provided in this article for single individuals;

(3) Levied, collected, and paid annually with respect to:

(A) That part of the net income of an estate or trust which has not become distributable during the taxable year. It is the purpose of this Code section to tax fiduciaries or beneficiaries on all income otherwise taxable under this chapter. Income received by a resident fiduciary shall not be subject to the tax imposed by this chapter when the income is accumulated for, is distributed, or becomes distributable during the taxable year to a nonresident of this state and when the income was received from business done outside this state, property held outside this state, or intangible property, other than from the licensing for use of the property, held by a fiduciary, including, but not limited to, gains from the sale or exchange of the property. No return of income exempt under this subparagraph shall be required;

(B) The taxable net income received during the taxable year by a deceased individual who at the time of death was a taxpayer and

who died during the taxable year or subsequent to the taxable year without having made a return; and

(C) The entire taxable net income of an insolvent or incompetent person, whether or not any portion of the taxable net income is held for the future use of the beneficiaries, when the fiduciary has complete charge of the net income.

(b) The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual.

(c) If the taxable year of a beneficiary is different from that of the estate or trust, the amount which the beneficiary is required to include in computing his net income shall be based upon the income of the estate or trust for any taxable year of the estate or trust ending with or within the beneficiary's taxable year.

(d) The tax imposed upon a fiduciary shall be a charge against the estate or trust. (Ga. L. 1931, Ex. Sess., p. 24, § 6; Code 1933, § 92-3103; Ga. L. 1937, p. 109, § 4; Ga. L. 1937-38, Ex. Sess., p. 150, § 4; Ga. L. 1966, p. 219, § 1; Code 1933, § 91A-3603, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 64; Ga. L. 1987, p. 191, § 2.)

Cross references. — Trusts generally, T. 53, C. 12.

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that

tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, § 1845 et seq.

ALR. — Deductibility, in determining individual income tax of trustee or other fiduciary, or amount paid by him, or for which he is responsible, on account of an improper investment, 107 ALR 443.

Allocation between capital and income of income tax in respect of trust, 108 ALR 1138.

Liability of settlor for income tax in respect of income of short-term trust, or

trust over which he retains control and management, 166 ALR 1308.

Income tax: construction and application of 1942 amendment of § 162(b) of Internal Revenue Code as to taxation or deduction of income of trust or estate to be distributed by fiduciary to legatees, heirs, or beneficiaries, 1 ALR2d 1283.

Modern status of rules governing allocation of stock dividends or splits between principal and interest, 81 ALR3d 876.

48-7-23. Taxation of partnerships; computation of net income; disallowance of charitable contributions; individual liability of partners; individual returns of distributive shares; when taxable year of partner differs from that of partnership.

The net income of a partnership shall be computed in the same manner and on the same basis as in the case of an individual except that the deduction of contributions for charitable purposes allowed by the Internal Revenue Code of 1986 shall not be allowed. Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity; and each partner shall include in his or her individual return his or her distributive shares, whether distributed or not, of the net income of the partnership for the taxable year except as provided in subsection (c) of Code Section 48-7-24. If the taxable year of a partner is different from that of the partnership, the amount included in a partner's individual return shall be based upon the income of the partnership for the taxable year of the partnership ending with or within the partner's taxable year. (Ga. L. 1931, Ex. Sess., p. 24, § 7; Code 1933, § 92-3104; Code 1933, § 91A-3604, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2; Ga. L. 1997, p. 450, § 1.)

Cross references. — Partnerships generally, T. 14, C. 8.

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 271 (1997). For article, "Aggregate-Plus Theory of Partnership Taxation," see 43 Ga. L. Rev. 717 (2009).

JUDICIAL DECISIONS

Deduction for fixed liability to make rebate to copartners. — Fixed liability to rebate to copartners a percentage of the purchase price of goods offered for sale to such partners and to the public generally, when based upon the amount of merchandise purchased by the partner, rather than upon the partner's interest in the partnership or upon total sales, and when the rebate is actually paid during

the taxable year, may be an ordinary and necessary expense paid or incurred during the taxable year in carrying on any trade or business, so as to be deductible from the gross income of the partnership in arriving at the net income of the partnership. *Bessemer Auto Parts, Inc. v. State Revenue Comm'r*, 110 Ga. App. 500, 139 S.E.2d 157 (1964).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 421.

C.J.S. — 85 C.J.S., Taxation, § 1848.

ALR. — Wife's share of income of partnership of which husband is also a member as taxable to husband or wife, 164 ALR 1144.

Constitutionality, construction, and application provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 42 ALR2d 797.

State income tax treatment of partnerships and partners, 2 ALR6th 1.

48-7-24. Nonresident members of resident partnerships; resident members of nonresident partnerships.

(a) When one or more of the individual members of a partnership doing business in this state are nonresidents of this state, the nonresidents shall be taxable on their share of the net profits of the partnership.

(b) When one or more of the individual members of a partnership doing business outside this state are residents of this state, the residents shall include in their individual returns their distributable share, whether distributed or not, of the net income of the partnership for the taxable year.

(c) Notwithstanding any other provision of this chapter to the contrary, the distributive share of a nonresident member of a resident limited partnership or other similar nontaxable entity which derives income exclusively from buying, selling, dealing in, and holding securities on its own behalf and not as a broker shall not constitute taxable income under this chapter. For purposes of this subsection, a resident limited partnership or similar nontaxable entity shall not include a family limited partnership or similar nontaxable entity the majority interest of which is owned by one or more natural or naturalized citizens related to each other within the fourth degree of reckoning according to the laws of descent and distribution. This subsection shall not apply to a person that participates in the management of the resident limited partnership or other similar nontaxable entity or that is engaged in a unitary business with another person that participates in the management of the resident limited partnership or other similar nontaxable entity. (Ga. L. 1931, Ex. Sess., p. 24, § 19; Code 1933, § 92-3117; Ga. L. 1937, p. 109, § 10; Ga. L. 1937-38, Ex. Sess., p. 150, § 6; Code 1933, § 91A-3615, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2; Ga. L. 1997, p. 450, § 2; Ga. L. 2005, p. 159, § 12/HB 488.)

Cross references. — Partnerships generally, T. 14, C. 8.

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assem-

bly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987,

and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for pur-

poses of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 271 (1997).

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Legislative intent. — Former Code 1933, § 92-3117 (see O.C.G.A. § 48-7-24) was enacted to eliminate any doubt as to taxation of net income of a resident of this state who had an income from business or property not located in Georgia. However, former Code 1933, § 92-3111 was broad enough to cover such income. *Head v. Maxwell*, 60 Ga. App. 488, 4 S.E.2d 45 (1939).

As applicable to tax years 1992, 1993, and 1994, when a partnership did business in Georgia, the individual members were taxable on the partners' share of the net profits of the partnership — regardless of whether the individual members qualified as doing business in Georgia. *Department of Revenue v. Sledge*, 241 Ga. App. 833, 528 S.E.2d 260 (2000).

Deduction for fixed liability to make rebate to copartners. — Fixed liability to rebate to copartners a percentage of the purchase price of goods offered for sale to such partners and to the public generally, when based upon the amount of merchandise purchased by the partner, rather than upon the partner's interest in the partnership or upon total sales, and when the rebate is actually paid during the taxable year, may be an ordinary and necessary expense paid or incurred during the taxable year in carrying on any trade or business so as to be deductible from the gross income of the partnership in arriving at the net income of the partnership. *Bessemer Auto Parts, Inc. v. State Revenue Comm'r*, 110 Ga. App. 500, 139 S.E.2d 157 (1964).

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, § 1848.

ALR. — Nature of interest of special partner for purpose of income tax, 45 ALR 1381.

Income tax on gain or loss realized by partner upon sale of his interest in partnership, 144 ALR 354.

Wife's share of income of partnership of

which husband is also a member as taxable to husband or wife, 164 ALR 1144.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 ALR 943.

State income tax treatment of partnerships and partners, 2 ALR6th 1.

48-7-25. Exempt corporations and organizations; procedure for obtaining exempt status; revocation of exempt status; grounds; retroactivity; statute of limitations; information returns; unrelated business income; deductibility of death benefit payments.

(a) The following organizations shall be exempt from taxation imposed by Code Section 48-7-21 as indicated:

(1) Subject to subsections (b) and (c) of this Code section, those organizations which are exempt from federal income taxation pursuant to Section 501(c), 501(d), 501(e), 664, or 401 of the Internal Revenue Code of 1986 shall be deemed to have similar exempt status for purposes of Code Section 48-7-21; and

(2) Insurance companies which pay to the state a tax upon premium income.

(b)(1) An organization's exempt status under paragraph (1) of subsection (a) of this Code section shall be subject to review and revocation by the commissioner in accordance with the provisions of paragraph (2) of this subsection.

(2)(A) The commissioner may revoke the exempt status of any organization described in paragraph (1) of subsection (a) of this Code section when:

(i) The Internal Revenue Service revokes the exempt status of the organization;

(ii) The organization ceases to be organized or operated in the manner in which it was organized or operated at the time the exempt status was granted;

(iii) The organization engages in any prohibited transaction as set forth in the Internal Revenue Code of 1986; or

(iv) There is any material change in the character or purpose of the organization or in the mode of operation of the organization.

(B) Revocation of an exempt status shall revoke the exempt status retroactively to the time of the occurrence of the disqualifying event or events. All exempt organizations shall immediately notify the commissioner in writing of the occurrence of any of the disqualifying events described in subparagraph (A) of this paragraph or of receipt by the organization of a notice of intent to terminate its exempt status by the Internal Revenue Service. The statute of limitations governing the assessment of any taxes determined to be due this state due to the revocation of exempt

status shall be tolled as of the date of the occurrence of the disqualifying event or events described in subparagraph (A) of this paragraph. The commissioner at any time may require an organization which is exempt from taxation to file an information return stating the organization's gross income, receipts, disbursements, accumulation of income, and other data deemed necessary for the proper administration of this Code section.

(c)(1) A tax is imposed on income of an organization exempted pursuant to paragraph (1) of subsection (a) of this Code section when the income is derived from trade or business which is not related to exempt purposes of organizations described in paragraph (1) of subsection (a) of this Code section. This income shall be referred to as unrelated business income and shall be the income which is defined in Section 512 of the Internal Revenue Code of 1986. The tax imposed on unrelated business income shall be at the rate provided in Code Section 48-7-21.

(2) If an organization is exempt under Section 501(c)(4) of the United States Internal Revenue Code of 1986, if the organization makes payments of death benefits as a result of the death of a member of the organization, and if payments have been made by the organization for at least five years prior to January 1, 1977, the payments shall be deductible from the unrelated business income tax which might be owed by the organization. The payment of such death benefits shall not operate to generate a rebate or a refund. If the amount of death benefits paid within the taxable year exceeds the unrelated business income tax owed for the same taxable year, the excess may be carried forward for a period of five years. (Ga. L. 1931, Ex. Sess., p. 24, § 5; Code 1933, § 92-3105; Ga. L. 1937, p. 109, § 5; Ga. L. 1943, p. 320, § 1; Ga. L. 1950, p. 75, § 1; Ga. L. 1952, p. 273, § 3; Ga. L. 1955, Ex. Sess., p. 27, § 7; Ga. L. 1960, p. 249, § 1; Ga. L. 1961, p. 180, § 1; Ga. L. 1973, p. 924, § 3; Ga. L. 1975, p. 154, § 2; Ga. L. 1976, p. 405, § 9; Ga. L. 1976, p. 613, § 1; Ga. L. 1977, p. 1133, § 1; Code 1933, § 91A-3605, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 65; Ga. L. 1983, p. 1350, § 12; Ga. L. 1987, p. 191, § 2; Ga. L. 1988, p. 13, § 48; Ga. L. 2008, p. 898, § 5/HB 1151.)

Cross references. — Authority of the Georgia Athletic and Entertainment Commission, § 43-4B-4.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, a period was deleted preceding the semicolon at the end of paragraph (a)(1).

Editor's notes. — Ga. L. 1983, p. 1350, § 15, not codified by the General Assembly, effective January 1, 1984, provides that, should subsection (e) of Code Section

48-6-93 or paragraph (b)(11) of Code Section 48-7-21 be declared invalid or unconstitutional, it is the intent of the General Assembly that the entire Act be held invalid and that the method of taxation affected by the Act revert to the method in effect prior to January 1, 1984.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a

taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 2008, p. 898, § 13, not codified by the General Assembly, provides that the amendment to this Code section shall be

applicable to all taxable years beginning on or after January 1, 2008.

U.S. Code. — The Internal Revenue Code of 1986, referred to in this Code section, is codified at Title 26 of U.S.C.

Administrative rules and regulations. — Corporations and organizations exempt from tax, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, § 560-7-3-.09.

Law reviews. — For article, "Why Captives, Lord, What Have They Ever Done?: The Georgia Captive Insurance Company Act," see 26 Ga. St. B.J. 119 (1990).

For note on discriminatory charitable trusts in Georgia, with regard to application of the cy pres doctrine, in light of *Evans v. Newton*, 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966), see 6 Ga. St. B.J. 428 (1970).

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What income of tax exempt corporation taxable. — State can tax the unrelated business income of a tax exempt corporation, but when this tax exempt corporation is engaged in competitive commerce with a nonexempt business the corporation loses the corporation's tax exemption as to that portion of the corporation's net income attributable to such competitive commerce, notwithstanding the fact that all other businesses are excluded from the plants where this business is conducted, or that this business is only conducted within these plants. 1968 Op. Att'y Gen. No. 68-378.

Out-of-state university is exempt under this section from payment of Georgia income taxes on the income derived from real property owned in Georgia in the name of the university so long as the university continues to operate exclusively for educational purposes and so long as no part of the university's earnings inure to the benefit of any private stockholder or individual. The university would of course be required to pay ad valorem property tax on the realty owned under these circumstances and should qualify to do business with the Secretary of State. 1967 Op. Att'y Gen. No. 67-13.

Medical College of Georgia exempt from ad valorem taxes. — Medical College of Georgia Foundation, Inc., being a corporation established for educational purposes with no part of its proceeds or property capable of inuring to the benefit of private persons, is exempt from ad valorem taxes. 1962 Op. Att'y Gen. p. 503.

Limits on scope of exemption for banks and trust companies. — Exemption for banks and trust companies doing a general banking business must be applied narrowly to only state or federally chartered companies doing such business and is not to be applied broadly to every enterprise engaged in the banking business. The General Assembly intends to treat private banks in the same manner as private individuals for income tax purposes and not like chartered banks. Private banks may not avail themselves of an exemption granted national and state banks under income tax provisions. 1954-56 Op. Att'y Gen. p. 693.

Applicability of state revenue laws to international banking corporation. — International banking corporation whose sole contact with Georgia is the corporation's operation of an agency office licensed under O.C.G.A. Art. 5, Ch. 1, T. 7

is not a bank for purposes of state revenue laws. 1976 Op. Att'y Gen. No. 76-105.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 243, 244. 71 Am. Jur. 2d, State and Local Taxation, § 389 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, §§ 701, 712, 719 et seq. 85 C.J.S., Taxation, § 1845 et seq.

ALR. — Exemption from taxation of the property of a Y.M.C.A. or Y.W.C.A., 34 ALR 1067; 81 ALR 1453.

What is a social club within statute imposing tax on dues or membership fees, 80 ALR 1296; 143 ALR 1381.

Exemption from taxation of property of fraternal or relief associations, 83 ALR 773.

Subjection to public supervision because of public service nature of business as basis of classification for purposes of taxation, 99 ALR 1164.

Exemption of charitable organization from taxation or special assessment, 108 ALR 284.

What is a municipal corporation within constitutional or statutory tax exemption provisions, 108 ALR 577.

Tax on corporations as affected by fact that corporation is not actually engaged in or carrying on business for which it was incorporated, 124 ALR 1109.

Hospital as within tax exemption provision not specifically naming hospitals, 144 ALR 1483.

Exemption of chamber of commerce from taxation, 152 ALR 181.

Tax exemption of property of religious, educational, or charitable body as extending to property or income thereof used in publication or sale of literature, 154 ALR 895.

Tax exemptions and the contract clause, 173 ALR 15.

Constitutionality, construction, and application provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 42 ALR2d 797.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution, 61 ALR2d 1031.

State tax on trust income as affected by foreign elements, 5 ALR3d 606.

Qualification of health care entities for federal tax exemption as charitable organization under 26 USCS § 501(c)(3), 134 ALR Fed 395.

What constitutes trade or business under Internal Revenue Code (U.S.C.A. Title 26), 161 ALR Fed. 245.

48-7-26. Personal exemptions.

(a) As used in this Code section, the term "dependent" shall have the same meaning as in the Internal Revenue Code of 1986.

(b)(1) An exemption of \$7,400.00 shall be allowed as a deduction in computing Georgia taxable income of a taxpayer and spouse, but only if a joint return is filed. If a taxpayer and spouse file separate returns, \$3,700.00 shall be allowed to each person as a deduction in computing Georgia taxable income.

(2) An exemption of \$2,700.00 shall be allowed as a deduction in computing Georgia taxable income for all taxpayers other than taxpayers who qualify for the exemption provided for in paragraph (1) of this subsection.

(3) Commencing with the taxable year beginning January 1, 2003, an exemption of \$3,000.00 for each dependent of a taxpayer shall be

allowed as a deduction in computing Georgia taxable income of the taxpayer.

(c) No exemption shall be allowed under this Code section for any dependent who has made a joint return with such dependent's spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(d) A deduction in lieu of a personal exemption deduction shall be allowed an estate or a trust as follows:

(1) An estate — \$2,700.00; and

(2) A trust — \$1,350.00. (Code 1981, § 48-7-26, enacted by Ga. L. 1987, p. 191, § 2; Ga. L. 1994, p. 381, § 1; Ga. L. 1998, p. 1, § 1; Ga. L. 1999, p. 81, § 48; Ga. L. 2012, p. 257, § 2-1/HB 386.)

The 2012 amendment, effective January 1, 2013, in paragraph (b)(1), substituted “\$7,400.00” for “\$5,400.00” in the first sentence, and added the second sentence; substituted “all taxpayers other than taxpayers who qualify for the exemption provided for in paragraph (1) of this subsection” for “each taxpayer other than a taxpayer who files a joint return” in paragraph (b)(2); deleted former paragraph (b)(3), relating to taxable years beginning on or after January 1, 1994, January 1, 1995, and January 1, 1998; and redesignated former paragraph (b)(4) as present paragraph (b)(3). See editor's note for applicability.

Editor's notes. — Ga. L. 1987, p. 191, § 2, effective March 11, 1987, repealed the former Code section and enacted the current Code section covering substantially the same subject matter. The former Code section was based on Ga. L. 1931, Ex. Sess., p. 24, § 8; Code 1933, § 91A-3606; Code 1933, § 92-3106; Ga. L. 1937, p. 109, § 6; Ga. L. 1941, p. 210, § 1; Ga. L. 1943, p. 321, § 1; Ga. L. 1952, p. 273, §§ 1, 2; Ga. L. 1952, p. 405, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 272, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 297, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 197, § 1; Ga. L. 1955, Ex. Sess., p. 27, § 3; Ga. L. 1960, p. 1005, § 2; Ga. L. 1965, p. 260, §§ 1, 2; Ga. L. 1966, p. 239, § 1; Ga. L. 1966, p. 271, § 1; Ga. L. 1968, p. 1037, § 1; Ga. L. 1971, p. 605, § 3; Ga. L. 1976, p. 250, § 1; Ga. L. 1978, p. 1471, § 1; Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 66; Ga. L.

1981, Ex. Sess., p. 8; and Ga. L. 1982, p. 3, § 48.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1998, p. 1, § 4, not codified by the General Assembly, makes subsections (b)-(d) of this Code section applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 2012, p. 257, § 7-1(e)/HB 386, not codified by the General Assembly, provides that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: “Tax, penalty, and interest liabili-

ties and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not

codified by the General Assembly, provides for severability.

Law reviews. — For review of 1998 legislation relating to revenue and taxation, see 15 Ga. St. U.L. Rev. 217 (1998). For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 112 (2012).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 92-3106, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Recipient of income liable for income tax. — Liability for income tax rests upon the person by whom the income, in respect of which the tax is imposed, is received or receivable. The recipient of the income is the person taxable, and unless expressly exempted every recipient is liable therefore. *Brandon v. State Revenue Comm'n*, 54 Ga. App. 62,

186 S.E. 872 (1936), *aff'd*, 184 Ga. 225, 190 S.E. 660 (1937) (decided under former Code 1933, § 92-3106).

Liability for income received by a married woman. — When a married woman living with her husband has an income of her own independent of her marital status, that income is not to be considered as a part of her husband's income. The wife is the recipient, the income is taxable, and the wife is the person liable. *Brandon v. State Revenue Comm'n*, 54 Ga. App. 62, 186 S.E. 872 (1936), *aff'd*, 184 Ga. 225, 190 S.E. 660 (1937) (decided under former Code 1933, § 92-3106).

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Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 92-3106, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Personal exemptions and credits are not considered in arriving at net income. 1969 Op. Att'y Gen. No. 69-17 (decided under former Code 1933, § 92-3106).

No exemption for child cared for but not adopted by grandparents. — Grandparent, caring for a grandchild under an award of custody in divorce proceedings, without formal or virtual adoption, is not entitled to an exemption by reason thereof. 1948-49 Op. Att'y Gen. p. 674 (decided under former Code 1933, § 92-3106).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 447.

C.J.S. — 85 C.J.S., Taxation, § 1879 et seq.

ALR. — Deductions in respect of leasehold in computing income tax, 82 ALR 332.

Income tax: deductibility of amount paid or expense incurred by taxpayer on account of his liability or alleged liability for tort, crime, or statutory violation, 104 ALR 680; 20 ALR2d 600.

Deductibility, in determining individual income tax of trustee or other fiduciary, or amount paid by him, or for which he is responsible, on account of an improper investment, 107 ALR 443.

Constitutionality, construction, and application of state statutes relating to exemption from taxation of amounts paid as pensions, war risk insurance, compensation, bonus, or other relief for veterans of World War, 116 ALR 1437.

Income tax: deductibility of taxes on property sold or purchased by taxpayer, 128 ALR 769.

Construction and application of statu-

tory provisions allowing deduction, in computing income tax of decedent's estate or of trust, of amounts distributable or distributed to legatees, heirs, or beneficiaries, 142 ALR 1109.

Liability of settlor for income tax in respect of income of short-term trust, or trust over which he retains control and management, 153 ALR 550; 166 ALR 1308.

Income taxes: when deduction for traveling and living expenses while away from home on business may be claimed, 159 ALR 1217.

Tax exemptions and the contract clause, 173 ALR 15.

Construction of provisions of Internal Revenue Code relating to alimony or maintenance payments, 4 ALR2d 252.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution, 61 ALR2d 1031.

48-7-27. Computation of taxable net income.

(a) Georgia taxable net income of an individual shall be the taxpayer's federal adjusted gross income, as defined in the United States Internal Revenue Code of 1986, less:

(1) Either the sum of all itemized nonbusiness deductions used in computing federal taxable income if the taxpayer used itemized nonbusiness deductions in computing federal taxable income or, if the taxpayer could not or did not itemize nonbusiness deductions, then a standard deduction as provided for in the following subparagraphs:

(A) In the case of a single taxpayer or a head of household, \$2,300.00;

(B) In the case of a married taxpayer filing a separate return, \$1,500.00;

(C) In the case of a married couple filing a joint return, \$3,000.00;

(D) An additional deduction of \$1,300.00 for the taxpayer if the taxpayer has attained the age of 65 before the close of the taxpayer's taxable year. An additional deduction of \$1,300.00 for the spouse of the taxpayer shall be allowed if a joint return is made by the taxpayer and the taxpayer's spouse and the spouse has attained the age of 65 before the close of the taxable year; and

(E) An additional deduction of \$1,300.00 for the taxpayer if the taxpayer is blind at the close of the taxable year. An additional

deduction of \$1,300.00 for the spouse of the taxpayer shall be allowed if a joint return is made by the taxpayer and the taxpayer's spouse and the spouse is blind at the close of the taxable year. For the purposes of this subparagraph, the determination of whether the taxpayer or the spouse is blind shall be made at the close of the taxable year except that, if either the taxpayer or the spouse dies during the taxable year, the determination shall be made as of the time of the death;

(2) The exemptions provided for in Code Section 48-7-26 together with the adjustments provided for in subsection (b) of this Code section;

(3)(A) The amount of salary and wage expenses eliminated in computing the individual's federal adjusted gross income because the individual has taken a federal jobs tax credit which requires, as a condition to using the federal jobs tax credit, the elimination of related salary and wage expenses.

(B) The amount of mortgage interest eliminated from federal itemized deductions for the purpose of computing mortgage interest credit on the federal return;

(4)(A) Income received from public pension or retirement funds, programs, or systems the income from which is exempted by federal law or treaty when the income is otherwise included in the taxpayer's federal adjusted gross income.

(B) Except as specifically provided in subparagraph (A) of this paragraph, paragraph (5) of this subsection, and paragraph (7) of this subsection, for taxable years beginning on or after January 1, 1989, no income from a public pension or retirement fund, program, or system (including those pension or retirement funds, programs, or systems provided for in Title 47) shall be exempt from income taxation in this state, notwithstanding any provision of Title 47 or any other provision of law to the contrary;

(5)(A) Retirement income otherwise included in Georgia taxable net income shall be subject to an exclusion amount as follows:

(i) For taxable years beginning on or after January 1, 1989, and prior to January 1, 1990, retirement income not to exceed an exclusion amount of \$8,000.00 per year received from any source;

(ii) For taxable years beginning on or after January 1, 1990, and prior to January 1, 1994, retirement income not to exceed an exclusion amount of \$10,000.00 per year received from any source;

(iii) For taxable years beginning on or after January 1, 1994, and prior to January 1, 1995, retirement income from any source not to exceed an exclusion amount of \$11,000.00;

(iv) For taxable years beginning on or after January 1, 1995, and prior to January 1, 1999, retirement income from any source not to exceed an exclusion amount of \$12,000.00;

(v) For taxable years beginning on or after January 1, 1999, and prior to January 1, 2000, retirement income from any source not to exceed an exclusion amount of \$13,000.00;

(vi) For taxable years beginning on or after January 1, 2000, and prior to January 1, 2001, retirement income not to exceed an exclusion amount of \$13,500.00 per year received from any source;

(vii) For taxable years beginning on or after January 1, 2001, and prior to January 1, 2002, retirement income from any source not to exceed an exclusion amount of \$14,000.00;

(viii) For taxable years beginning on or after January 1, 2002, and prior to January 1, 2003, retirement income from any source not to exceed an exclusion amount of \$14,500.00;

(ix) For taxable years beginning on or after January 1, 2003, and prior to January 1, 2006, retirement income from any source not to exceed an exclusion amount of \$15,000.00;

(x) For taxable years beginning on or after January 1, 2006, and prior to January 1, 2007, retirement income from any source not to exceed an exclusion amount of \$25,000.00;

(xi) For taxable years beginning on or after January 1, 2007, and prior to January 1, 2008, retirement income from any source not to exceed an exclusion amount of \$30,000.00;

(xii) For taxable years beginning on or after January 1, 2008, and prior to January 1, 2012, retirement income from any source not to exceed an exclusion amount of \$35,000.00; and

(xiii) For taxable years beginning on or after January 1, 2012, retirement income from any source not to exceed an exclusion amount of \$35,000.00 for each taxpayer meeting the eligibility requirement set forth in division (i) or (ii) of subparagraph (D) of this paragraph or an amount of \$65,000.00 for each taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph.

(B) In the case of a married couple filing jointly, each spouse shall if otherwise qualified be individually entitled to exclude retirement income received by that spouse up to the exclusion amount.

(C) The exclusions provided for in this paragraph shall not apply to or affect and shall be in addition to those adjustments to net income provided for under any other paragraph of this subsection.

(D) A taxpayer shall be eligible for the exclusions granted by this paragraph only if the taxpayer:

(i) Is 62 years of age or older but less than 65 years of age during any part of the taxable year; or

(ii) Is permanently and totally disabled in that the taxpayer has a medically demonstrable disability which is permanent and which renders the taxpayer incapable of performing any gainful occupation within the taxpayer's competence; or

(iii) Is 65 years of age or older during any part of the year.

(E) For the purposes of this paragraph, retirement income shall include but not be limited to interest income, dividend income, net income from rental property, capital gains income, income from royalties, income from pensions and annuities, and no more than \$4,000.00 of an individual's earned income. Earned income in excess of \$4,000.00, including but not limited to net business income earned by an individual from any trade or business carried on by such individual, wages, salaries, tips, and other employer compensation, shall not be regarded as retirement income. The receipt of earned income shall not diminish any taxpayer's eligibility for the retirement income exclusions allowed by this paragraph except to the extent of the express limitation provided in this subparagraph.

(F) The commissioner shall by regulation require proof of the eligibility of the taxpayer for the exclusions allowed by this paragraph.

(G) The commissioner shall by regulation provide that for taxable years beginning on or after January 1, 1989, and ending before October 1, 1990, penalty and interest may be waived or reduced for any taxpayer whose estimated tax payments and tax withholdings are less than 70 percent of such taxpayer's Georgia income tax liability if the commissioner determines that such underpayment or deficiency is due to an increase in net taxable income attributable directly to amendments to this paragraph or paragraph (4) of this subsection enacted at the 1989 special session of the General Assembly and not due to willful neglect or fraud;

(6) A portion of the qualified payments to minority subcontractors, as provided in Code Section 48-7-38;

(7) Social security benefits and tier 1 railroad retirement benefits, to the extent included in federal taxable income;

(8) The amount of a dependent's unearned income included in federal adjusted gross income of a parent's return;

(9) An amount equal to the amount of contributions to the Teachers Retirement System of Georgia made by a taxpayer between July 1, 1987, and December 31, 1989, which contributions were not subject to federal income taxation but were subject to Georgia income taxation. The purpose of the exclusion provided for in this paragraph is to allow a taxpayer a recovery adjustment for such amount after commencement of distributions by such retirement system to such taxpayer and to establish the same basis for federal and state income tax purposes;

(10) With respect to a taxpayer who is a self-employed individual treated as an employee pursuant to Section 401(c)(1) of the Internal Revenue Code, an amount equal to the amount paid by the taxpayer during the taxable year for insurance which constitutes medical care for the taxpayer and the spouse and dependents of the taxpayer which is not otherwise deductible by the taxpayer for federal income tax purposes because the applicable percentage for that taxable year as specified pursuant to Section 162(l) of the Internal Revenue Code is less than 100 percent;

(11) For taxable years beginning on or after January 1, 2002, and prior to January 1, 2007:

(A) An amount equal to the amount of contributions by parents or guardians of a designated beneficiary to a savings trust account established pursuant to Article 11 of Chapter 3 of Title 20 on behalf of the designated beneficiary who is claimed as a dependent on the Georgia income tax return of the beneficiary's parents or guardians, but not exceeding \$2,000.00 per beneficiary;

(B) If the parents or guardians file joint returns, separate returns, or single returns, the sum of contributions constituting deductions on their returns under this paragraph shall not exceed \$2,000.00 per beneficiary;

(C) In order to claim the deduction for a taxable year:

(i) Such parent or guardian must have claimed and been allowed itemized deductions pursuant to Section 63(d) of the Internal Revenue Code of 1986 and paragraph (1) of this subsection;

(ii) The federal adjusted gross income for such taxable year cannot exceed \$100,000.00 for a joint return or \$50,000.00 for a separate or single return except as provided in subparagraph (D) of this paragraph; and

(iii) Such parent or guardian must be the account owner of the designated beneficiary's account;

(D) The maximum deduction authorized by this paragraph for each beneficiary shall decrease by \$400.00 for each \$1,000.00 of federal adjusted gross income over \$100,000.00 for a joint return or \$50,000.00 for a separate or single return; and

(E) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such taxable year but on or before the deadline for making contributions to an individual retirement account pursuant to Section 219(f)(3) of the Internal Revenue Code of 1986;

(11.1) For taxable years beginning on or after January 1, 2007:

(A) An amount equal to the amount of contributions to a savings trust account established pursuant to Article 11 of Chapter 3 of Title 20 on behalf of the designated beneficiary, but not exceeding \$2,000.00 per beneficiary;

(B) If the contributor files a separate return or single return, the sum of contributions constituting deductions on the contributor's return under this paragraph shall not exceed \$2,000.00 per beneficiary;

(C) If the contributor files a joint return, the sum of contributions constituting deductions on the contributor's return under this paragraph shall not exceed \$2,000.00 per beneficiary; and

(D) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such taxable year but on or before the deadline for making contributions to an individual retirement account under federal law for such taxable year;

(12) Military income received by a member of the National Guard or any reserve component of the armed services of the United States stationed in a combat zone or stationed in defense of the borders of the United States pursuant to military orders. The exclusion provided under this paragraph:

(A) Shall apply with respect to each taxable year, or portion thereof, covered by such military orders; and

(B) Shall apply only with respect to such member of the National Guard or any reserve component of the armed forces and only with respect to military income earned during the period covered by such military orders;

(12.1)(A) Disability income from the United States Department of Veterans Affairs received by a disabled veteran who is a citizen and resident of Georgia.

(B) As used in this paragraph, the term “disabled veteran” means any wartime veteran who was discharged under honorable conditions and who has been adjudicated by the United States Department of Veterans Affairs as being at least 90 percent totally and permanently disabled and entitled to receive service connected benefits and any veteran who is receiving or who is entitled to receive a statutory award from the United States Department of Veterans Affairs for:

- (i) Loss or permanent loss of use of one or both feet;
- (ii) Loss or permanent loss of use of one or both hands;
- (iii) Loss of sight in one or both eyes; or

(iv) Permanent impairment of vision of both eyes of the following status: Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no greater than 20 degrees in the better eye;

(13)(A) An amount equal to the actual amount expended for organ donation expenses not to exceed the amount of \$10,000.00 incurred in accordance with the “National Organ Procurement Act.”

(B) In order to qualify for the exclusion under subparagraph (A) of this paragraph, such taxpayer must, while living, donate all or part of such person’s liver, pancreas, kidney, intestine, lung, or bone marrow. In the taxable year in which the donation is made, the taxpayer shall be entitled to claim the exclusion provided in subparagraph (A) of this paragraph only with respect to unreimbursed travel expenses, lodging expenses, and lost wages incurred as a direct result of the organ donation;

(13.1) An amount equal to 100 percent of the premium paid by the taxpayer during the taxable year for high deductible health plans as defined by Section 223 of the Internal Revenue Code to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been provided from a health reimbursement arrangement and have not been included in itemized nonbusiness deductions;

(14) The deduction for school teachers provided and allowed by Section 62(a)(2)(D) of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been included in itemized nonbusiness deductions; and

(15) The deduction provided and allowed by Section 179 of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been included in itemized nonbusiness deductions.

(b)(1) There shall be added to the taxable income:

(A) Dividend or interest income, to the extent that the dividend or interest income is not included in gross income for federal income tax purposes, on obligations of any state except this state or of political subdivisions except political subdivisions of this state;

(B) Interest or dividends on obligations of the United States or of any authority, commission, instrumentality, territory, or possession of the United States which by the laws of the United States are exempt from federal income taxes but not from state income taxes; and

(C) Income consisting of lump sum distributions from an annuity, pension plan, or similar source which were removed from federal adjusted gross income for the purposes of special federal tax computations or treatment.

(2) There shall be subtracted from taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. Any amount subtracted under this paragraph shall be reduced by any interest expenses directly or indirectly attributable to the production of the interest or dividend income.

(3) There shall be added to taxable income any income taxes imposed by any tax jurisdiction except the State of Georgia to the extent deducted in determining federal taxable income.

(4) No portion of any deductions or losses including, but not limited to, net operating losses, which occurred in a year in which the taxpayer was not subject to taxation in this state, may be deducted in any tax year. When federal adjusted gross income includes deductions or losses not allowed pursuant to this paragraph, an adjustment deleting them shall be made under rules established by the commissioner.

(5) Income, losses, and deductions previously used in computing Georgia taxable income shall not again be used in computing Georgia taxable income; and the commissioner shall provide for needed adjustments by regulation.

(6) Reserved.

(7) Except as otherwise provided in paragraph (4) of subsection (a) of this Code section, this chapter shall not be construed to repeal any tax exemptions contained in other laws of this state not referred to in this Code section. Those exemptions and the exemptions provided by federal law and treaty shall be deducted on forms provided by the commissioner.

(8) All elections made by the taxpayer under the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986 shall also apply under this article.

(9) If the taxpayer claims the tax credit provided for in subsection (d) of Code Section 48-7-40.6 with respect to qualified child care property, Georgia taxable income shall be increased by any depreciation deductions attributable to such property to the extent such deductions are used in determining federal taxable income.

(10)(A) Except as otherwise provided in subparagraph (C) of this paragraph, the amount of any qualified withdrawals from a savings trust account under Article 11 of Chapter 3 of Title 20 shall not be subject to state income tax under this chapter.

(B) For withdrawals other than qualified withdrawals from such a savings trust account, the proportion of earnings in the account balance at the time of the withdrawal shall be applied to the total funds withdrawn to determine the earnings portion to be included in the account owner's taxable net income in the year of withdrawal.

(C) For withdrawals other than qualified withdrawals from such a savings trust account and for withdrawals from such a savings trust account which are rolled over to a qualified tuition program other than the qualified tuition program established under Article 11 of Chapter 3 of Title 20, the proportion of the contributions in an account balance at the time of a withdrawal which previously have been used to reduce taxable net income pursuant to subsection (a) of this Code section shall be applied to the nonearnings portion of the total funds withdrawn to determine an amount to be included in the account owner's taxable net income in the same taxable year.

(11) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.3.

(12) Georgia taxable income shall be increased by the amount of the payments, compensation, or other economic benefit disallowed by Code Section 48-7-21.1.

(13) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.4.

(c) Georgia taxable income shall, if the taxpayer so elects, be adjusted with respect to federal depreciation deductions as provided in Code Section 48-7-39.

(d)(1)(A) As used in this paragraph, the term "individual" shall mean the same as is defined in Code Section 48-1-2.

(B) Georgia resident shareholders of Subchapter "S" corporations may make an adjustment to federal adjusted gross income for Subchapter "S" corporation income where another state does not recognize a Subchapter "S" corporation.

(C) A Georgia individual resident who is a partner in a partnership, who is a member of a limited liability company taxed as a partnership, or who is a single member of a limited liability company which is disregarded for federal income tax purposes may make an adjustment to federal adjusted gross income for the entity's income taxed in another state which imposes on the entity a tax on or measured by income.

(D) Adjustments pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such Subchapter "S" corporation, partnership, or limited liability company. In multitiered situations, the adjustment for such individual shall be determined by allocating such income between the shareholders, partners, or members at each tier based upon their profit/loss percentage.

(2) Nonresident shareholders of a Georgia Subchapter "S" corporation shall execute a consent agreement to pay Georgia income tax on their portion of the corporate income in order for such Subchapter "S" corporation to be recognized for Georgia purposes. A consent agreement for each shareholder shall be filed by the corporation with its corporate tax return in the year in which the Subchapter "S" corporation is first required to file a Georgia income tax return. For a Subchapter "S" corporation in existence prior to January 1, 2008, the consent agreement shall be filed for each shareholder in the first Georgia tax return filed for a year beginning on or after January 1, 2008. A consent agreement shall also be filed in any subsequent year for any additional nonresident who first becomes a shareholder of the Subchapter "S" corporation in that year. Shareholders of a federal Subchapter "S" corporation which is not recognized for Georgia purposes may make an adjustment to federal adjusted gross income in order to avoid double taxation on this type of income. Adjustments shall not be allowed unless tax was actually paid by such corporation. (Code 1933, § 92-3107, enacted by Ga. L. 1971, p. 605, § 4; Ga. L. 1975, p. 843, § 1; Ga. L. 1978, p. 1456, § 1; Ga. L. 1979, p. 888, § 2; Code 1933, § 91A-3607, enacted by Ga. L. 1978, p. 309, § 2; Ga. L.

1979, p. 5, § 67; Ga. L. 1979, p. 888, § 4; Ga. L. 1980, p. 10, §§ 17, 18; Ga. L. 1981, p. 1857, §§ 35, 36; Ga. L. 1981, p. 1903, §§ 3, 4; Ga. L. 1982, p. 3, § 48; Ga. L. 1984, p. 1644, § 2; Ga. L. 1986, p. 749, § 1; Ga. L. 1986, p. 1480, § 1; Ga. L. 1987, p. 191, § 2; Ga. L. 1988, p. 475, § 2; Ga. L. 1989, p. 1112, §§ 1-3; Ga. L. 1989, Ex. Sess., p. 5, § 1; Ga. L. 1990, p. 1369, § 1; Ga. L. 1992, p. 1296, § 1; Ga. L. 1992, p. 2977, § 1; Ga. L. 1994, p. 381, § 2; Ga. L. 1998, p. 1, § 2; Ga. L. 1998, p. 1515, § 1; Ga. L. 1998, p. 1516, § 1; Ga. L. 1999, p. 13, § 2; Ga. L. 2000, p. 408, § 1; Ga. L. 2001, p. 76, §§ 2, 3; Ga. L. 2002, p. 372, §§ 2, 3; Ga. L. 2002, p. 1149, § 1; Ga. L. 2003, p. 637, § 1; Ga. L. 2003, p. 665, §§ 4, 5; Ga. L. 2004, p. 102, § 1; Ga. L. 2005, p. 18, § 1/HB 263; Ga. L. 2005, p. 30, § 1/HB 191; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 157, § 2/HB 282; Ga. L. 2005, p. 159, §§ 13, 14/HB 488; Ga. L. 2005, p. 529, § 1/HB 556; Ga. L. 2006, p. 526, § 1/HB 1160; Ga. L. 2007, p. 112, § 2/HB 225; Ga. L. 2007, p. 271, §§ 3, 4/SB 184; Ga. L. 2008, p. 159, §§ 7, 8/HB 1014; Ga. L. 2008, p. 292, § 4/HB 977; Ga. L. 2008, p. 324, § 48/SB 455; Ga. L. 2008, p. 898, §§ 6, 7/HB 1151; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 652, § 4/HB 410; Ga. L. 2009, p. 796, § 2/HB 379; Ga. L. 2010, p. 9, § 4-1/HB 1055; Ga. L. 2012, p. 108, § 1/HB 808; Ga. L. 2012, p. 257, § 2-2/HB 386; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2012 amendments. — The first 2012 amendment, effective April 16, 2012, added paragraph (a)(12.1). The second 2012 amendment, effective January 1, 2013, in paragraph (a)(5), added “and” at the end of division (a)(5)(A)(xii), in division (a)(5)(A)(xiii), deleted “and prior to January 1, 2013” following “January 1, 2012” near the beginning and substituted a period for a semicolon at the end, and deleted divisions (a)(5)(A)(xiv) through (a)(5)(A)(xvii). See editor’s note for applicability.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation at the end of subparagraph (a)(12)(B) and division (a)(12.1)(B)(iv).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, “and” was deleted at the end of paragraph (a)(13), “; and” was substituted for the period at the end of paragraph (a)(14), and paragraph (a)(14), as enacted by Ga. L. 2005, p. 157, § 2, was redesignated as paragraph (a)(15).

Pursuant to Code Section 28-9-5, in 2010, “to” was inserted between “subject” and “an” in subparagraph (a)(5)(A).

Editor’s notes. — Ga. L. 1984, p. 1644, § 4, not codified by the General Assembly, provided that the Act would apply to taxable years beginning on or after January 1, 1985.

Ga. L. 1986, p. 749, § 2, not codified by the General Assembly, provided: “This Act shall become effective upon its approval by the Governor [approved April 3, 1986] or upon its becoming law without his approval and shall apply to tax years beginning on or after January 1, 1986”.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of

1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1988, p. 475, § 3, not codified by the General Assembly, provided that the Act applies to taxable years beginning on or after January 1, 1988.

Ga. L. 1988, p. 475, § 3, not codified by the General Assembly, also provided that provisions of the Internal Revenue Code of 1986 which were as of January 1, 1988, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes.

Ga. L. 1989, p. 1112, § 4, not codified by the General Assembly, provides that the Act shall be effective for tax years beginning on or after January 1, 1989.

Ga. L. 1989, Ex. Sess., p. 5, § 2, not codified by the General Assembly, provided: "(a) This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to taxable years beginning on or after January 1, 1989.

"(b) Tax, penalty, and interest liabilities for taxable years beginning prior to January 1, 1989, shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Code Section 48-7-27 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." The Act was approved by the Governor September 20, 1989.

Ga. L. 1990, p. 1369, § 2, not codified by the General Assembly, provides that the Act shall be applicable to all taxable years beginning on or after January 1, 1990.

Ga. L. 1998, p. 1, § 4, not codified by the General Assembly, makes subsection (a) of this Code section applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 1998, p. 1515, § 2, not codified by the General Assembly, makes subsection (a) of this Code section applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 1999, p. 13, § 4, not codified by the General Assembly, makes subsection

(b) of this Code section applicable to all taxable years beginning on or after January 1, 2000.

Ga. L. 2000, p. 408, § 2, not codified by the General Assembly, makes subsection (a) applicable to all taxable years beginning on or after January 1, 2000.

Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that §§ 1-4, 6, and 8-14 of this Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2003, p. 637, § 2, not codified by the General Assembly, provides that this Act "shall be applicable to all taxable years beginning on or after January 1, 2003."

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2003, p. 665, § 47(b), not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2003.

Ga. L. 2004, p. 102, § 2, not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2005.

Ga. L. 2005, p. 18, § 2/HB 263, not codified by the General Assembly, provides that the Act shall be applicable to all taxable years beginning on or after January 1, 2004.

Ga. L. 2005, p. 30, § 7(a), not codified by the General Assembly, provides that the 2005 amendment to paragraph (b)(11) shall be applicable to all taxable years beginning on or after January 1, 2006.

Ga. L. 2005, p. 157, § 4/HB 282, not codified by the General Assembly, provides that the Act shall be applicable to all taxable years beginning on or after January 1, 2005.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2005, p. 159, § 27(c)/HB 488, not codified by the General Assembly, provides that the 2005 amendment to paragraph (b)(2) shall be applicable to all tax-

able years beginning on or after January 1, 2005.

Ga. L. 2005, p. 159, § 27(h)/HB 488, not codified by the General Assembly, provides that the 2005 amendment to paragraph (b)(6) shall be applicable to all taxable years beginning on or after January 1, 2004.

Ga. L. 2006, p. 526, § 2/HB 1160, not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2006.

Ga. L. 2007, p. 271, § 7(b)/SB 184, not codified by the General Assembly, provides that the amendment to paragraph (a)(12) shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2008, p. 159, § 10/HB 1014, not codified by the General Assembly, provides that the 2008 amendment to paragraph (b)(10) shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2008, p. 292, § 6(a)/HB 977, not codified by the General Assembly, provides, in part, that the 2008 amendment shall be applicable to all taxable years beginning on or after January 1, 2009.

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2009, p. 652, § 6(a)/HB 410, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2009.

Ga. L. 2009, p. 796, § 4/HB 379, not codified by the General Assembly, provides, in part, that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2010.

Ga. L. 2012, p. 108, § 2/HB 808, not codified by the General Assembly, provides, in part, that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2012, p. 257, § 7(e)/HB 386, not

codified by the General Assembly, provides, in part, that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Administrative rules and regulations. — Net taxable income, individual, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Chapter 560-7-4.

Law reviews. — For annual survey of state and local taxation, see 38 Mercer L. Rev. 337 (1986). For article, "Issues and Opportunities Under Georgia's Updated Income Tax Provisions," see 25 Ga. St. B.J. 144 (1989). For review of 1998 legislation relating to revenue and taxation, see 15 Ga. St. U.L. Rev. 217 (1998). For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 112 (2012).

For note on 1990 amendment to this Code section, see 7 Ga. St. U.L. Rev. 363 (1990). For note on 1992 amendment to this Code section, see 9 Ga. St. U.L. Rev. 338 (1992). For note on the 2001 amendment to this Code section, see 18 Ga. St.

U.L. Rev. 84 (2001). For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1929, p. 92, former Code 1933, §§ 92-3107 and 92-3109 are included in the annotations for this Code section.

Retirement benefits not exempted. — Subjecting retirement benefits of retired school teachers to state income taxation did not violate the constitutional prohibition against state laws impairing the obligation of contracts since the teachers had no vested right to an irrevocable exemption which was barred under Ga. Const. 1983, Art. VII, Sec. I, Para. I. *Parrish v. Employees' Retirement Sys.*, 260 Ga. 613, 398 S.E.2d 353 (1990), cert. denied, 500 U.S. 353, 111 S. Ct. 2016, 114 L. Ed. 2d 103 (1991).

Income tax is not a property tax, but is more nearly within category of an excise tax. *Brandon v. State Revenue Comm'n*, 54 Ga. App. 62, 186 S.E. 872 (1936), aff'd, 184 Ga. 225, 190 S.E. 660 (1937) (decided under former Code 1933, § 92-3107).

Meaning of "income tax" and "income." — Term "income tax" means a tax on the actual gain or an actual increase in wealth, and does not include a mere unrealized increase in value. "Income" is the gain derived from capital or labor, or both combined. "Income" for any given period of time is the amount of gain so derived during a designated period. *Brandon v. State Revenue Comm'n*, 54 Ga. App. 62, 186 S.E. 872 (1936), aff'd, 184 Ga. 225, 190 S.E. 660 (1937) (decided under former Code 1933, § 92-3107).

Research tax credit. — Trial court erred in finding invalid a regulation which interpreted a research tax credit codified in a statute; the regulation's requirement that a business enterprise have had a positive state taxable net income for each of the preceding three years in order to be eligible for the tax credit was authorized by statute and was reasonable because the regulation reflected the legislature's

intent that research activities be increased, which was most likely to occur when a business enterprise was able to generate income through the enterprise's activities rather than when a business had a negative income or, in other words, a net operating loss. *Ga. Dep't of Revenue v. Ga. Chemistry Council, Inc.*, 270 Ga. App. 615, 607 S.E.2d 207 (2004).

Compromise settlement with Internal Revenue Service as basis for assessing state income tax. — Commissioner is authorized to use a compromise agreement with the U.S. Internal Revenue Service on the amount of changed income of the taxpayer as the basis for assessment of Georgia income tax, even if it is the sole basis for assessing state tax. *Blackmon v. Monroe*, 233 Ga. 656, 212 S.E.2d 827 (1975).

Adoption of federal tax procedures not a delegation of state power to federal authorities. — When the State Revenue Commission (now state revenue commissioner) merely adopted the federal method of calculating net income under the federal statute as the state's method of accomplishing that result, and properly assesses the tax due to the state as part of the amount which the taxpayer paid to the United States, such adoption is not a delegation to the federal authorities of the state's power to tax. *Head v. McKenney*, 61 Ga. App. 552, 6 S.E.2d 405 (1939) (decided under former Ga. L. 1929, p. 92).

Taxation of rebates given to partners on their individual purchases. — When rebates have no connection with the total sales or profits of a partnership or with the interest of a particular partner in the partnership, but are merely a discount to the partners on the partners' own individual purchases and, hence, only such rebates do not constitute profits and are not taxable. *Undercofler v. Bessemer Auto Parts, Inc.*, 221 Ga. 61, 142 S.E.2d 912 (1965).

No deduction for losses incurred by shareholder on distribution of dis-

solved corporation's assets. — When the taxpayer owns all or a majority of the capital stock of a corporation and the corporation is dissolved, and the correct proportionate share of the assets of the corporation is turned over to the taxpayer owning a majority of the capital stock, such a distribution of the assets is treated as a sale of the stock by the taxpayer stockholder to the corporation, and losses incurred by reason of such transaction are not deductible as losses in computing the net income. *State Revenue Comm'n v. Glenn*, 61 Ga. App. 567, 6 S.E.2d 384 (1939) (decided under former Code 1933, § 92-3109).

Adjustment to shareholder in S corporations federal adjusted gross income. — Former paragraph (d)(2) of O.C.G.A. § 48-7-27 did not permit a taxpayer, who was a shareholder in an S

corporation, to adjust the taxpayer's federal adjusted gross income by subtracting the entire share of the taxpayer's passed-through income from the corporation as the double taxation to be avoided was the payment of income taxes by the corporation at the corporate level and then the payment of income taxes by the taxpayer as an individual on the same income in the same year; the taxpayer should have only subtracted the taxpayer's share of the amount of the corporation's income on which corporate taxes were paid in Georgia. *Graham v. Hanna*, 297 Ga. App. 542, 677 S.E.2d 686 (2009), cert. denied, No. S09C1403, 2009 Ga. LEXIS 789 (Ga. 2009).

Cited in *Collins v. Waldron*, 259 Ga. 582, 385 S.E.2d 74 (1989); *Silliman v. Cassell*, 292 Ga. 464, 738 S.E.2d 606 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 92-3107 and 92-3109 are included in the annotations for this Code section.

Treatment of employee's unrestricted subsistence allowance. — Unrestricted subsistence allowance, that is, an allowance which is in no wise limited to expenditures incurred on account of the employee's business, is an allowance to defray the employee's personal living expenses and is, in substance, a form of compensation or remuneration within the scope of the statute and the definition of "wages" in Ga. L. 1960, p. 7 (see O.C.G.A. § 48-7-100). To the extent that an employee incurs expenses on account of the business of the employer, and the employee is not otherwise reimbursed therefor, so that such expenses are a charge against this subsistence allowance, then the situation is one to be handled under regulations of the commissioner promulgated in accordance with Ga. L. 1960, p. 7 (see O.C.G.A. § 48-7-101(f)(4)). 1960-61 Op. Att'y Gen. p. 506. (decided under former Code 1933, §§ 92-3107 and 92-3109).

Amounts paid to state officials for expenses are part of such official's

gross income and are taxable to the extent that those amounts are not used for such official business purposes. 1969 Op. Att'y Gen. No. 69-190. (decided under former Code 1933, § 92-3109).

Payments by check, tendered by municipal corporation to municipal officers and employees for unused sick leave are, if the payments are legal, income and subject to taxation. 1971 Op. Att'y Gen. No. U71-16. (decided under former Code 1933, § 92-3107).

Income from Superior Court Clerk's Retirement Fund is subject to state income tax except that all but 3 percent of aggregate contributions of taxpayer to fund is excluded from tax base until entire cost to taxpayer has been recovered tax free. 1962 Op. Att'y Gen. p. 519. (decided under former Code 1933, § 92-3107).

Applicant for homestead exemption for elderly must include social security benefits in computations. — Social security benefits must be included in determining whether a person over 65 and that person's spouse have met the income requirements for the increased homestead exemption. 1969 Op. Att'y Gen. No. 69-112. (decided under former Code 1933, § 92-3107).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 444.

C.J.S. — 85 C.J.S., Taxation, § 1854 et seq.

ALR. — Commissions as executor, administrator, guardian, etc., as income subject to income tax, 18 ALR 414.

Income tax on profit upon sale by executor or administrator at advance over cost to decedent, 33 ALR 813.

Gains from unlawful business or transactions as subject of income tax, 43 ALR 799; 51 ALR 1026; 166 ALR 891.

Nature of interest of special partner for purpose of income tax, 45 ALR 1381.

Gains from unlawful business or transactions as subject of income tax, 51 ALR 1026; 166 ALR 891.

Deduction on account of exempt securities in taxation of corporations or their shareholders, 57 ALR 899; 65 ALR 878.

Income tax in respect of amounts received by stockholder upon liquidation of corporation, 65 ALR 148.

Computation for purposes of income tax of gain or loss from sale of stock rights, 70 ALR 1305.

Deduction of fixed periodical percentage ("straight-line method") as proper method of determining depreciation for purposes of property or income taxes, 71 ALR 971.

Computation of income tax of stockholder in event of reorganization, merger, or consolidation of corporations, 78 ALR 677.

Interest deductible in computing income tax, 80 ALR 214; 154 ALR 934.

Military service as basis of discrimination in statutes or ordinances relating to taxation or licenses, 83 ALR 1231.

State income tax on resident in respect of income earned outside the state, 87 ALR 380.

Computation of losses or profits on sale of securities for purposes of income tax, 90 ALR 732; 108 ALR 1261; 149 ALR 988.

Liability for income tax in respect of amount of tax paid by another, 91 ALR 1270.

Income tax in respect of compensation for services rendered under contract to governmental or political body by one not an officer or employee, 93 ALR 190.

Computation of income tax as affected by fact that taxpayer was domiciled within state for only part of the taxable year, 93 ALR 1199; 126 ALR 455.

Income as "property" within constitutional limitation on taxation, 97 ALR 1488.

Income tax as payable in respect of difference between cost to donor of securities or other property and value at time of gift, 99 ALR 468.

Income tax in respect of that part of extraordinary cash dividend on stock held by trustee that is allocated to corpus as regards respective rights of life beneficiary and remaindermen, 99 ALR 518.

Income tax: deductibility of loss incurred as director, officer, or stockholder of corporation, 99 ALR 566.

Income tax: purchased annuities, 99 ALR 624.

Income tax in respect of exchange of properties, 102 ALR 6.

Validity and construction of state statutes imposing tax on income derived from dividends on stock of foreign corporations, 102 ALR 77; 143 ALR 147.

Method or formula for determination for income tax purposes of value of corporate stock absent sufficient basis in transactions of purchase and sale, 103 ALR 955.

Income tax in relation to stock dividends (including character of corporate distributions as stock dividends), 105 ALR 761; 130 ALR 408; 143 ALR 230; 144 ALR 1337; 167 ALR 554.

Income tax in respect of accrued interest on purchase of mortgaged property by mortgagee, 108 ALR 441.

Deductibility in computing state income tax of amount paid or payable in respect of succession, inheritance, or estate tax, 108 ALR 1401.

Income tax in respect of salaries of public officers and employees, 108 ALR 1439; 114 ALR 1190; 120 ALR 1477; 122 ALR 1393; 125 ALR 1421.

Payment to one performing services as compensation subject to income tax or gift exempt therefrom, 110 ALR 285.

Construction and application of statutory provisions allowing deduction, in

computing income tax of decedent's estate or of trust, of amounts distributable or distributed to legatees, heirs or beneficiaries, 117 ALR 372; 142 ALR 1109.

Applicability, construction, and effect of provision of income tax act excluding from income subject to tax the value of property acquired by gift, devise, bequest, or descent, 119 ALR 415.

Construction and application of provision of income tax statute regarding exclusion from gross income of proceeds of life insurance received on death of insured, 119 ALR 1195; 133 ALR 413; 170 ALR 315.

When dividends on corporate stock become taxable as income to a taxpayer making his return on a cash basis, 120 ALR 1280; 143 ALR 596; 158 ALR 1432; 167 ALR 303.

Year in which loss or bad debt must be charged in order to be allowed as a deduction from taxpayer's income, 121 ALR 697; 135 ALR 1430.

Scope of term "obligations" in provision of Internal Revenue Act exempting interest upon obligations of state, territory, or political subdivisions from tax, 121 ALR 1276.

Income tax: deductibility of interest or penalties paid or incurred by taxpayer on account of delinquent or deferred taxes, 121 ALR 1464.

Question whether gift is valid, or a mere sham, as regards income tax of donor, 125 ALR 779.

Constitutionality of tax upon privilege of declaring or receiving dividends as regards dividends by foreign corporations, 130 ALR 1237; 46 ALR 1214.

Constitutionality, construction, and application of statutory provisions for taxation of grantor on income of revocable trust and trust income distributable to him, 132 ALR 785; 143 ALR 1116.

Liability of settlor for income tax in respect of trust income applied to relieve him of financial obligation or burden, 132 ALR 819; 158 ALR 1315.

Liability of settlor for income tax in respect of income of short-term trust, or trust over which he retains control and management, 132 ALR 844; 153 ALR 550; 166 ALR 1308.

Construction and application of provision of income tax statute regarding exclu-

sion from gross income of proceeds of life insurance received on death of insured, 133 ALR 413; 170 ALR 315.

Income tax on stockholders in respect of undistributed profits of corporation, 133 ALR 806.

Time as of which value of property taken by remainderman is to be determined in ascertaining profit or loss from its sale for income tax purposes, 134 ALR 1163.

Income tax on gain or loss realized by partner upon sale of his interest in partnership, 144 ALR 354.

Provisions of income tax statutes as to inclusion of interest as applicable to interest on tax refunds, 147 ALR 846.

Trustor as subject to income tax in respect of income of irrevocable trust for charitable purposes, 148 ALR 1236.

What is an "income tax" within deduction provisions of income tax statute, 151 ALR 983.

Interest deductible in computing income tax, 154 ALR 934.

Income tax in respect of amount received by, or credited or accrued to, taxpayer who has returned, or may be required to return, it, or to cancel the credit which it represents, 154 ALR 1276.

Income tax: deductibility of expenses of one seeking public office or public or private employment, 155 ALR 128.

When dividends on corporate stock become taxable as income, 158 ALR 1432; 167 ALR 303.

Income taxes: when deduction for traveling and living expenses while away from home on business may be claimed, 159 ALR 1217.

Character for tax purposes of arrangement whereby one obtains an annuity contract having a surrender value, or obtains at the same time a life insurance policy and an annuity or endowment contract, 159 ALR 1336.

Year as of which an assignment, in whole or in part, of unsettled claim against a third person becomes a realized gain for purposes of income tax of assignee, 162 ALR 318.

Right to deduct from taxable income as business expense share of profits of business which taxpayer has agreed to pay to another for property, 162 ALR 836.

Income tax of owner as affected by disposition of mortgaged premises, 162 ALR 907.

Right of owner of all shares of corporation or association taxable as corporation to have its income taxed as his personal income, 162 ALR 996.

Gain or loss on sale of business as computable on basis of sale of single piece of property or of separate fragments or ingredients, 162 ALR 1041.

Constitutionality, construction, and application of provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 166 ALR 516; 42 ALR2d 797.

Year in which corporate stock becomes worthless for purpose of deducting loss from taxpayer's income, 166 ALR 716.

Gains from unlawful business or transaction as subject of income tax, 166 ALR 891.

Liability of settlor for income tax in respect of income of short-term trust, or trust over which he retains control and management, 166 ALR 1308.

When dividends on corporate stock become taxable as income, 167 ALR 303.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 ALR 943.

Construction and application of provision of income tax statute regarding exclusion from gross income of proceeds of life insurance received on death of insured, 170 ALR 315.

Interest paid to assignee or donee of obligation, for period antedating assignment or transfer, as taxable income of assignor or donor, 174 ALR 619.

Income tax: recognition of gain or loss on receipt of public refunding bonds for old bonds, 1 ALR2d 415.

Employee's acquisition of employer's commodities at discount or without cost as within sales or gross income tax statute, 1 ALR2d 1020.

Income tax treatment of payment to spouse for relinquishment of inchoate marital rights in property of other spouse, 1 ALR2d 1037.

Construction of provisions of Internal Revenue Code relating to alimony or maintenance payments, 4 ALR2d 252.

Giving negotiable paper for debt as payment for purposes of federal income tax laws, 4 ALR2d 1223.

Scope and application of term "other obligations" in federal statute exempting stocks, bonds, treasury notes and other obligations from taxation by or under state or municipal or local authority, 9 ALR2d 521.

What constitute amounts received under workmen's compensation acts within exemption provisions of federal income tax law, 16 ALR2d 1334.

What constitutes transaction entered into for profit for purposes of income tax deduction, 39 ALR2d 878.

Constitutionality, construction, and application provisions of state tax law for conformity with federal income tax law or administrative and judicial interpretation, 42 ALR2d 797.

Income tax consequences to shareholder of dividend in kind, 56 ALR2d 474.

Tips as wages for purposes of Federal Labor Standards Act and state wage laws, 65 ALR2d 974.

Payment of premiums by corporation on policy on life of stockholder as constituting taxable income to the insured, 73 ALR2d 708.

Modern status of rules governing allocation of stock dividends or splits between principal and interest, 81 ALR3d 876.

Decision to take foreign income taxes as federal credit under § 901 of the Internal Revenue Code (26 USCS § 901) as precluding their deduction for state income tax purposes, 77 ALR4th 823.

Construction and application of state corporate income tax statutes allowing net operation loss deductions, 33 ALR5th 509.

State income tax treatment of S corporations and their shareholders, 118 ALR5th 597.

What constitutes trade or business under Internal Revenue Code (U.S.C.A. Title 26), 161 ALR Fed. 245.

48-7-28. Reciprocity.

A resident individual who has an established business in another state, has investment in property having a taxable situs in another state, or engages in employment in another state may deduct from the tax due upon the entire net income of the resident individual the tax paid upon the net income of the business, investment, or employment in another state when the business, investment, or employment is in a state that levies a tax upon net income. In no case shall the credit permitted under this Code section exceed the tax which would be payable to this state upon a like amount of taxable income. (Ga. L. 1931, Ex. Sess., p. 24, § 13; Code 1933, § 92-3111; Ga. L. 1957, p. 397, § 4; Ga. L. 1962, p. 703, § 2; Ga. L. 1963, p. 16, § 1; Code 1933, § 91A-3608, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2.)

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of

1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

JUDICIAL DECISIONS

Scope of term "established business." — Term "established business" is broad enough to cover a business conducted or operated by the individual alone

or a business operated by the individual and partners. *Head v. Maxwell*, 60 Ga. App. 488, 4 S.E.2d 45 (1939).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 451 et seq.

C.J.S. — 85 C.J.S., Taxation, § 1925.

ALR. — Income tax: constitutionality, construction, and application of statutory provisions allowing credit for income tax paid to another state or country, 134 ALR 1433; 12 ALR2d 359.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 ALR 943.

Income tax: constitutionality, construction, and application of statutory provisions allowing credit for income tax paid to another state or country, 12 ALR2d 359.

48-7-28.1. Tax benefit.

(a) If a taxpayer repays in the current tax year certain amounts of income that were subject to tax under this chapter in a prior year and a tax benefit would be allowed under similar circumstances under Section 1341 of the Internal Revenue Code, a tax benefit shall be allowed on the Georgia income tax return. The tax benefit shall be the reduced tax for the current tax year due to the deduction for the repaid income or the reduction in tax for the prior year or years due to the exclusion of the repaid income. The reduction in tax shall qualify as a refundable tax credit on the return for the current year.

(b) No credit will be allowed unless Georgia income tax was actually paid in the prior year or if the taxpayer was not subject to Georgia income tax. (Code 1981, § 48-7-28.1, enacted by Ga. L. 1997, p. 525, § 1.)

Editor's notes. — Ga. L. 1997, p. 525, § 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1997.

48-7-28.2. Employer social security credits.

(a) As used in this Code section, the term “employer social security credit” means the employer social security credit defined in Section 45B(a) of the Internal Revenue Code of 1986, as amended.

(b) If an employer elects to take an employer social security credit pursuant to Section 38 of the Internal Revenue Code of 1986, as amended, the employer, in calculating Georgia taxable net income, shall be allowed a deduction equal to the employer social security credit. (Code 1981, § 48-7-28.2, enacted by Ga. L. 1998, p. 580, § 1.)

Editor's notes. — Ga. L. 1998, p. 580, § 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1999.

U.S. Code. — Sections 38 and 45B of the Internal Revenue Code of 1986, referred to in this Code section, are codified as 26 U.S.C. §§ 38 and 45B, respectively.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U.L. Rev. 217 (2011).

48-7-28.3. Expenses from transactions with related members.

(a) As used in this Code section, the term:

(1) “Comprehensive income tax treaty” means a convention or agreement, entered into by the United States and approved by Congress, with a foreign government for the allocation of all catego-

ries of income subject to taxation or the withholding of tax on interest, dividends, and royalties for the prevention of double taxation of the respective nations' residents and the sharing of information.

(2) "Corporation" means:

(A) A corporation incorporated under the laws of this state or incorporated or organized under the laws of any other state, territory, or nation; or

(B) A limited liability company treated as a corporation for federal income tax purposes or any other person treated as a corporation for federal income tax purposes. A limited liability company which is disregarded as a separate entity for income tax purposes shall also be disregarded as a separate entity for purposes of this Code section.

(3) "Foreign nation" means an established sovereign government that is recognized as such by the United States Department of State.

(4) "Intangible expenses and costs" means expenses, losses, and costs directly or indirectly for, related to, or in connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or disposition of intangible property, to the extent such amounts are allowed as deductions or costs in determining taxable income before net operating loss deduction and special deductions for the taxable year under the Internal Revenue Code of 1986. The term includes but is not limited to:

(A) Royalty, patent, technical, and copyright fees;

(B) Licensing fees; and

(C) Other similar expenses and costs.

(5) "Intangible property" includes but is not limited to patents, patent applications, trade names, trademarks, service marks, copyrights, mask words, trade secrets, and similar types of intangible assets.

(6) "Interest expenses and costs" includes but is not limited to amounts directly or indirectly allowed as deductions under Section 163 of the Internal Revenue Code of 1986 for purposes of determining taxable income under the Internal Revenue Code of 1986 to the extent such expenses and costs are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or disposition of intangible property.

(7) "Related person" means:

(A) A stockholder who is an individual or a member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code of 1986 if the stockholder and the members of the stockholder's family own, directly or indirectly, beneficially or constructively, in the aggregate at least 50 percent of the value of the taxpayer's outstanding stock;

(B) A stockholder, or a stockholder's partnerships, estate, trusts, or corporations, if the stockholder and the stockholder's partnerships, estate, trusts, and corporations own, directly or indirectly, beneficially or constructively, in the aggregate at least 50 percent of the value of the taxpayer's outstanding stock; or

(C) A corporation, or a person related to the corporation in a manner that would require an attribution of stock from the corporation to the person or from the person to the corporation under the attribution rules of Section 318 of the Internal Revenue Code of 1986, if the taxpayer owns, directly or indirectly, beneficially or constructively, at least 50 percent of the value of the corporation's outstanding stock.

(D) The attribution rules of Section 318 of the Internal Revenue Code of 1986 apply for purposes of determining whether the ownership requirements in subparagraphs (A) through (C) of this paragraph have been met.

(E) A limited liability company treated as a partnership for federal income tax purposes shall be considered a partnership for purposes of this paragraph and paragraph (8) of this subsection.

(8) "Related member" means a person, with respect to the taxpayer during all or any portion of the tax year:

(A) That is a related person;

(B) That is a component member as defined in Section 1563(b) of the Internal Revenue Code of 1986;

(C) To or from whom there would be required an attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code of 1986; or

(D) That, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in subparagraphs (A) through (C) of this paragraph.

(9) "Valid business purpose" means one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the

taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(b) For purposes of computing its Georgia taxable net income under Code Sections 48-7-21 and 48-7-27, a taxpayer shall add back otherwise deductible interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related members. Such expenses and costs shall be added before the income is apportioned or allocated as provided by Code Section 48-7-31.

(c) The commissioner shall have the authority to reverse in whole or in part the adjustments required in subsection (b) of this Code section when the taxpayer and the commissioner agree in writing to the application or use of an alternative method of apportionment under subparagraph (d)(2)(C) of Code Section 48-7-31, Code Section 48-7-35, or Code Section 48-7-31.1. Nothing in this Code section shall be construed to limit or negate the commissioner's authority otherwise to enter into agreements and compromises otherwise allowed by law.

(d)(1) For purposes of this subsection, the term:

(A) "Allocated or apportioned, or both" does not mean the amount of income that is subject to allocation or apportionment, or both. Rather it means the amount that is arrived at after applying the allocation and apportionment rules of a state as defined in subparagraph (B) of this paragraph. A tax or the portion of a tax, which is or would be imposed regardless of the amount of the income, shall not be considered to be a tax on or measured by the income of the related member.

(B) "State" means a state in the United States of America, including the District of Columbia, but does not include those states under whose laws the taxpayer files with the related member, or the related member files with another related member, a combined income tax report or return, a consolidated income tax report or return, or any other report or return where such report or return is due because of the imposition of a tax on, or measured by, income and where such combined income tax report or return, consolidated income tax report or return, or other report or return results in the elimination of the tax effects from transactions directly or indirectly between the taxpayer and the related member.

(2) The amount of the adjustment required by subsection (b) of this Code section shall be reduced, but not below zero, to the extent the corresponding interest expenses and costs and intangible expenses and costs:

(A) Are received as income in an arm's length transaction by the related member; and

(B) Such income is allocated or apportioned, or both, to and taxed by Georgia or another state that imposes a tax on or measured by the income of the related member.

(3) In claiming the exception allowed by this subsection, the taxpayer shall disclose on its return, with respect to the related member, the name of the related member, the federal identification number of the related member, the name of each state, the amount of the interest expenses and costs and intangible expenses and costs allocated or apportioned to and taxed by each state for such related member, and such other information as the commissioner may prescribe.

(e)(1) The adjustment required by subsection (b) of this Code section shall be reduced, but not below zero, if and to the extent:

(A) The interest expenses and costs and intangible expenses and costs are paid, accrued, or incurred to a related member domiciled in a foreign nation which has in force a comprehensive income tax treaty with the United States;

(B) The transaction giving rise to the interest expenses and costs and intangible expenses and costs has a valid business purpose; and

(C) The amounts of such interest expenses and costs and intangible expenses and costs were determined at arm's length rates.

(2) In claiming the exception allowed by this subsection, the taxpayer shall disclose on its return:

(A) The name and federal identification number of the related member;

(B) The amount of the interest expenses and costs and intangible expenses and costs;

(C) The country of domicile of the related member; and

(D) Such other information as the commissioner may prescribe.

(f) The adjustment required in subsection (b) of this Code section shall not apply to the portion of interest expenses and costs and intangible expenses and costs that the taxpayer establishes by a preponderance of the evidence that meets both of the following:

(1) The related member during the same taxable year directly or indirectly paid, accrued, or incurred such portion to a person that is not a related member; and

(2) The transaction giving rise to the interest expenses and costs and intangible expenses and costs has a valid business purpose.

(g) Nothing in this Code section shall require a taxpayer to add to its Georgia taxable net income more than once any amount of interest expenses and costs and intangible expenses and costs that the taxpayer pays, accrues, or incurs to a related member.

(h) Nothing in this Code section shall be construed to limit or negate the commissioner's authority to make adjustments under Code Section 48-7-58.

(i) The adjustment required by this Code section shall apply to a corporation that files a separate return with Georgia and to the separate taxable income computation of each member of a Georgia consolidated return.

(j) In addition to other penalties imposed by this title, the penalty for failure to make the adjustment required by this Code section shall be 10 percent of the additional tax that results because of this Code section. The commissioner may waive this penalty pursuant to the provisions of Code Section 48-2-43.

(k) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to effectuate this Code section. (Code 1981, § 48-7-28.3, enacted by Ga. L. 2004, p. 30, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, “subparagraph (d)(2)(C)” was substituted for “subparagraph (d)(2)(E)” in subsection (c).

Editor's notes. — Ga. L. 2005, p. 30,

§ 7(a), not codified by the General Assembly, provides that this Code section applies to all taxable years beginning on or after January 1, 2006.

48-7-28.4. Adjustments to taxes; disallowing expenses paid to certain real estate investment trusts; procedures, conditions, and limitations.

(a) As used in this Code section, the term:

(1) “Association taxable as a corporation” does not include:

(A) A real estate investment trust other than a captive real estate investment trust;

(B) Any qualified real estate investment trust subsidiary under Section 856(i) of the Internal Revenue Code of 1986, as amended, other than a qualified REIT subsidiary of a captive real estate investment trust;

(C) Any Listed Australian Property Trust, meaning an Australian unit trust registered as a “Managed Investment Scheme”

under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market, or an entity organized as a trust, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, 75 percent or more of the voting power or value of the beneficial interests or shares of such trust; or

(D) Any qualified foreign entity, meaning a corporation, trust, association or partnership organized outside the laws of the United States and which satisfies the following criteria:

(i) At least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined at Section 856(c)(5)(B) of the Internal Revenue Code of 1986, as amended, thereby including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and United States government securities;

(ii) The entity is not subject to tax on amounts distributed to its beneficial owners, or is exempt from entity-level taxation;

(iii) The entity distributes at least 85 percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis;

(iv) Not more than 10 percent of the voting power or value in such entity is held directly or indirectly or constructively by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market; and

(v) The entity is organized in a country which has a tax treaty with the United States.

(2) "Captive real estate investment trust" means any real estate investment trust the shares or beneficial interests of which are not regularly traded on an established securities market and more than 50 percent of the voting power or value of the shares or beneficial interests of which are owned or controlled, directly or indirectly or constructively, by a single entity that is:

(A) Treated as an association taxable as a corporation under the Internal Revenue Code of 1986, as amended; and

(B) Not exempt from federal income tax pursuant to the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended.

(3) "Dividends paid deduction" means the deduction for dividends paid which is allowed pursuant to Sections 561 through 565 and

Sections 856 through 859 of the Internal Revenue Code of 1986, as amended.

(4) "Real estate investment trust" means an entity that has elected such status for federal income tax purposes and meets the requirements of Section 856 of the Internal Revenue Code of 1986, as amended.

(5) "Related member" means the same as is defined in Code Section 48-7-28.3.

(b) For purposes of computing Georgia taxable net income under Code Sections 48-7-21 and 48-7-27, a taxpayer shall add back all expenses and costs directly or indirectly paid, accrued, or incurred to a captive real estate investment trust. Such expenses and costs shall be added back before the income is apportioned or allocated as provided by Code Section 48-7-31.

(c) The amount of the adjustment required by subsection (b) of this Code section shall be reduced, but not below zero, to the extent the corresponding expenses and costs received as income by the captive real estate investment trust are reduced by expenses paid, accrued, or incurred to persons that are not related members, and such expenses shall be allowed in computing the captive real estate investment trust's federal taxable income.

(d) The commissioner shall have the authority to reverse in whole or in part the adjustments required in subsection (b) of this Code section when the taxpayer and the commissioner agree in writing to the application or use of an alternative method of apportionment under subparagraph (d)(2)(C) of Code Section 48-7-31, Code Section 48-7-35, or Code Section 48-7-31.1. Nothing in this Code section shall be construed to limit or negate the commissioner's authority otherwise to enter into agreements and compromises otherwise allowed by law.

(e)(1) For purposes of this subsection, the term:

(A) "Allocated or apportioned, or both" means the amount of income that is arrived at after applying the allocation and apportionment rules of a state. A tax or the portion of a tax, which is or would be imposed regardless of the amount of the income, shall not be considered to be a tax on or measured by the income of the captive real estate investment trust. The term shall not mean the amount of income that is subject to allocation or apportionment, or both.

(B) "State" means a state in the United States of America, including the District of Columbia, but does not include those states under whose laws the taxpayer files with the captive real estate investment trust, or the captive real estate investment trust

files with another related member, a combined income tax report or return, a consolidated income tax report or return, or any other report or return where such report or return is due because of the imposition of a tax on, or measured by, income and where such combined income tax report or return, consolidated income tax report or return, or other report or return results in the elimination of the tax effects from transactions directly or indirectly between the taxpayer and the captive real estate investment trust or between the captive real estate investment trust and another related member.

(2) The amount of the adjustment required by subsection (b) of this Code section shall be reduced, but not below zero, to the extent the corresponding expenses and costs are received as income in an arm's length transaction by the captive real estate investment trust and to the extent such income is allocated or apportioned, or both, to and taxed by Georgia or another state that imposes a tax on or measured by the income of the captive real estate investment trust. For purposes of this paragraph, the corresponding expenses and costs shall not be considered to have been received as income by the captive real estate investment trust to the extent such income is reduced, in computing the income of the captive real estate investment trust in Georgia or another state, by the dividends paid deduction or by expenses paid, accrued, or incurred to persons that are not related members, or both.

(3) In claiming the exception allowed by this subsection, the taxpayer shall disclose on its return, with respect to the captive real estate investment trust, the name, the federal identification number, the name of each state, the amount of the expenses and costs allocated or apportioned to and taxed by each state, and such other information as the commissioner may prescribe.

(f) Nothing in this Code section shall require a taxpayer to add to its Georgia taxable net income more than once any amount of expenses and costs that the taxpayer pays, accrues, or incurs to a captive real estate investment trust.

(g) Nothing in this Code section shall be construed to limit or negate the commissioner's authority to make adjustments under Code Section 48-7-58.

(h) Except as otherwise provided in this Code section, a real estate investment trust that is intended to be regularly traded on an established securities market, and that satisfies the requirements of Section 856(a)(5) and (6) of the Internal Revenue Code of 1986, as amended, by reason of Section 856(h)(2) of the Internal Revenue Code of 1986, as amended, shall not be deemed a captive real estate investment trust within the meaning of this Code section.

(i) A real estate investment trust that does not become regularly traded on an established securities market within one year of the date on which it first becomes a real estate investment trust shall be deemed not to have been regularly traded on an established securities market, retroactive to the date it first became a real estate investment trust. For purposes of this subsection, a real estate investment trust becomes a real estate investment trust on the first day that it has both met the requirements of Section 856 of the Internal Revenue Code of 1986, as amended, and has elected to be treated as a real estate investment trust pursuant to Section 856(c)(1) of the Internal Revenue Code of 1986, as amended.

(j) For purposes of this Code section, the constructive ownership rules of Section 318(a) of the Internal Revenue Code of 1986, as amended, as modified by Section 856(d)(5) of the Internal Revenue Code of 1986, as amended, shall apply in determining the ownership of stock, assets, or net profits of any person.

(k) The adjustment required by this Code section shall apply to a corporation that files a separate return with Georgia and to the separate taxable income computation of each member of a Georgia consolidated return.

(l) In addition to other penalties imposed by this title, the penalty for failure to make the adjustment required by this Code section shall be 10 percent of the additional tax that results because of this Code section. The commissioner may waive this penalty pursuant to the provisions of Code Section 48-2-43.

(m) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to effectuate this Code section. (Code 1981, § 48-7-28.4, enacted by Ga. L. 2009, p. 796, § 3/HB 379; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, deleted “, for purposes of paragraph (2) of this subsection,” following “as a corporation” in the introductory language of paragraph (a)(1); in subparagraph (a)(1)(A), deleted “as defined in this Code section,” preceding “other than” and revised punctuation; revised punctuation in subparagraph (a)(1)(B); substituted “United States government” for “U.S. Government” in division (a)(1)(D)(i); in paragraph (a)(2), revised punctuation and substituted “shares or beneficial interests” for “beneficial interests or shares”; revised punctuation in subsection (c); and, in subparagraph

(e)(1)(A), substituted “means the amount of income that is arrived at after applying the allocation and apportionment rules of a state” for “does not mean the amount of income that is subject to allocation or apportionment, or both. Rather it means the amount that is arrived at after applying the allocation and apportionment rules of a state as defined in subparagraph (B) of this paragraph”, and added the last sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, a comma was deleted following “as amended” at the end of subsection (i).

Editor’s notes. — Ga. L. 2009, p. 796, § 4/HB 379, not codified by the General

Assembly, provides, in part, that this Code section shall be applicable to all taxable years beginning on or after January 1, 2010.

48-7-29. Tax credits for rural physicians.

(a) As used in this Code section, the term:

(1) "Rural county" means a county in this state that has 65 persons per square mile or fewer according to the United States decennial census of 1990 or any future such census.

(2) "Rural hospital" means an acute-care hospital located in a rural county that contains fewer than 100 beds.

(3) "Rural physician" means a physician licensed to practice medicine in this state, who practices in a rural county and resides in a rural county or a county contiguous to the rural county in which such physician practices and primarily admits patients to a rural hospital and practices in the fields of family practice, obstetrics and gynecology, pediatrics, internal medicine, or general surgery.

(b)(1) A person qualifying as a rural physician shall be allowed a credit against the tax imposed by Code Section 48-7-20 in an amount not to exceed \$5,000.00. The tax credit may be claimed for not more than five years, provided that the physician continues to qualify as a rural physician. In no event shall the amount of the tax credit exceed the taxpayer's income tax liability, and any unused tax credit shall not be allowed to be carried forward to apply to the taxpayer's succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(2) No physician who on July 1, 1995, is currently practicing in a rural county shall be eligible to receive the credit provided for in paragraph (1) of this subsection. No credit shall be allowed for a physician who has previously practiced in a rural county, unless, after July 1, 1995, that physician returns to practice in a rural county after having practiced in a nonrural county for at least three years.

(c) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-29, enacted by Ga. L. 1995, p. 960, § 1; Ga. L. 2002, p. 1478, § 1.)

Editor's notes. — Ga. L. 1987, p. 191, § 2, effective March 11, 1987, repealed former Code Section 48-7-29. The former Code section was based on Ga. L. 1977, p. 772, § 1; Ga. L. 1978, p. 309, § 2; and Ga. L. 1979, p. 5, § 68, and related to child care credit and credit for household and dependent care expenses.

Ga. L. 1995, p. 960, § 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 2002, p. 1478, § 2, not codified by the General Assembly, provides that the amendments to paragraphs (a)(2) and (a)(3) are applicable to all taxable years

beginning on or after January 1, 2003.

Administrative rules and regulations. — Rural physician credit, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, § 560-7-8-.20.

Law reviews. — For article, “Revenue

and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U.L. Rev. 217 (2011).

48-7-29.1. Retrofitting certain single-family homes with accessibility features.

(a) As used in this Code section, the term:

(1) “Accessibility features” means:

(A) One no-step entrance allowing access into the residence;

(B) Interior passage doors providing a 32 inch wide clear opening;

(C) Reinforcements in bathroom walls allowing later installation of grab bars around the toilet, tub, and shower, where such facilities are provided; and

(D) Light switches and outlets placed in accessible locations.

(2) “Taxpayer” means a permanently disabled person who has been issued a permanent permit under subsection (c) of Code Section 40-2-74.1 or a person who has been issued a special permanent permit under subsection (e) of Code Section 40-2-74.1.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 as follows:

(1) In the amount of \$500.00 with respect to the purchase during that taxable year of a new, single-family home containing all of the accessibility features defined under subsection (a) of this Code section; or

(2) For qualifying expenditures made to retrofit an existing, single-family home with one or more accessibility features as defined under subsection (a) of this Code section, a credit shall be allowed with respect to each such accessibility feature in the amount of \$125.00 or the actual cost of such accessibility feature, whichever is lower, provided that the aggregate amount of such credit under this paragraph for such accessibility features shall not exceed \$500.00.

(c) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed \$500.00 per residence or the taxpayer’s income tax liability, whichever is less. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer’s next

three succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(d) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-29.1, enacted by Ga. L. 1998, p. 599, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, "Code Section 40-2-74.1" was substituted for "Code Section 40-6-222" twice in paragraph (a)(2).

Editor's notes. — Ga. L. 1987, p. 191, § 2 repealed former Code Section 48-7-29.1, relating to work place modification credit, effective March 11, 1987.

Ga. L. 1998, p. 599, § 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1999.

Administrative rules and regula-

tions. — Disabled person home purchase or retrofit credit, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, § 560-7-8-.44.

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

48-7-29.2. Tax credit for qualified caregiving expenses.

(a) As used in this Code section, the term:

(1) "Qualified caregiving expenses" means payments by the taxpayer for home health agency services, personal care services, personal care attendant services, homemaker services, adult day care, respite care, or health care equipment and supplies which equipment and supplies have been determined to be medically necessary by a physician which services, care, or equipment and supplies are:

(A) Provided to the qualifying family member; and

(B) Purchased or obtained from an organization or individual not related to the taxpayer or the qualifying family member.

(2) "Qualifying family member" means the taxpayer or an individual who is related to the taxpayer by blood, marriage, or adoption and who:

(A) Is at least 62 years of age; or

(B) Has been determined to be disabled by the Social Security Administration.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 for qualified caregiving expenses in an amount not to exceed 10 percent of the total amount expended for qualified caregiving expenses. No taxpayer shall be entitled to such credit with respect to the same qualified caregiving expenses claimed by another taxpayer.

(c) In no event shall the amount of the tax credit exceed \$150.00 or the taxpayer's income tax liability, whichever is less. Any unused tax credit shall not be allowed to be carried forward to apply to the taxpayer's succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(d) No credit shall be allowed under this Code section with respect to any qualifying caregiving expenses either deducted or subtracted by the taxpayer in arriving at Georgia taxable net income or with respect to any qualified caregiving expenses for which amounts were excluded from Georgia taxable net income.

(e) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-29.2, enacted by Ga. L. 1998, p. 927, § 1; Ga. L. 2002, p. 415, § 48.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, Code Section 48-7-29.1 as enacted by Ga. L. 1998, p. 927, § 1, was redesignated as Code Section 48-7-29.2.

Editor's notes. — Ga. L. 1987, p. 191, § 2 repealed former Code Section 48-7-29.2, relating to solar energy credit, effective March 11, 1987.

Ga. L. 1998, p. 927, § 2, not codified by

the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1999.

Administrative rules and regulations. — Qualified caregiving expense credit, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, § 560-7-8-.43.

48-7-29.3. Tax credit for federal qualified transportation fringe benefits.

(a) As used in this Code section, the term "federal qualified transportation fringe benefit" means only the following transportation benefits provided by an employer to any employee as provided in Section 132(f) of the Internal Revenue Code of 1986, as amended:

(1) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment;

(2) Any transit pass;

(3) Qualified parking on or near a location from which the employee commutes to work by transportation described in paragraph (1) of this subsection, in a commuter highway vehicle, or by carpool. Qualified parking shall not include parking provided to an employee on or near the business premises of the employer and shall not include any parking on or near property used by the employee for residential purposes.

(b) A taxpayer shall be allowed a state income tax credit against the tax imposed by this chapter for any federal qualified transportation

fringe benefit provided by the taxpayer to an employee which benefit is in addition to and not in lieu of compensation otherwise payable to the employee, in an amount equal to \$25.00 per employee receiving such benefit; provided, however, that in no event shall the total amount of such tax credit exceed the annual amount expended by such employer in providing such federal qualified transportation fringe benefits to such employees.

(c) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's next three succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(d) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. Such rules and regulations shall include, but not be limited to, a minimum required usage of ten workdays per month of the federal qualified transportation fringe benefit provided to the employee in order to obtain the credit authorized under this Code section. (Code 1981, § 48-7-29.3, enacted by Ga. L. 1999, p. 651, § 1; Ga. L. 2000, p. 1294, § 1.)

Editor's notes. — Ga. L. 1999, p. 651, § 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2001.

U.S. Code. — Section 132 of the Internal Revenue Code of 1986, referred to in subsection (a), is codified at 26 U.S.C. § 132.

48-7-29.4. Tax credit for disaster assistance funds received; rules and regulations.

(a) A taxpayer who receives disaster assistance during a taxable year from the Georgia Emergency Management Agency or the Federal Emergency Management Agency shall be allowed a credit against the tax imposed by Code Section 48-7-20 in an amount equal to \$500.00 or the actual amount of such disaster assistance, whichever is less. The commissioner may require adequate supporting documentation showing that the taxpayer received such assistance.

(b) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against succeeding years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(c) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions

of this Code section. (Code 1981, § 48-7-29.4, enacted by Ga. L. 2000, p. 410, § 1.)

Cross references. — Emergency management, T. 38, C. 3.

Code Commission notes. — Ga. L. 2000, p. 410, § 1; Ga. L. 2000, p. 451, § 1; Ga. L. 2000, p. 845, § 1; and Ga. L. 2000, p. 1445, § 2 each enacted a Code Section 48-7-29.4. Pursuant to Code Section 28-9-5, in 2000, the Code section enacted by Ga. L. 2000, p. 451, § 1 was redesignated as Code Section 48-7-29.5, the Code

section enacted by Ga. L. 2000, p. 845, § 1 was redesignated as Code Section 48-7-29.6, and the Code section enacted by Ga. L. 2000, p. 1445, § 2 was redesignated as Code Section 48-7-29.7.

Editor's notes. — Ga. L. 2000, p. 410, § 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2000.

48-7-29.5. Tax credit for private driver education courses of minors; required documentation; rules and regulations.

(a) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 with respect to the amount expended by such taxpayer for a completed course of driver education for a dependent minor child of such taxpayer at a private driver training school licensed by the Department of Driver Services under Chapter 13 of Title 43, "The Driver Training School License Act," except as otherwise provided by this Code section. The amount of such tax credit per dependent minor child of a taxpayer shall be the actual amount expended for such course, or \$150.00, whichever is less.

(b)(1) The tax credit provided by this Code section shall be allowed not more than once for each dependent minor child of a taxpayer.

(2) In no event shall the aggregate amount of the tax credit provided by this Code section exceed the taxpayer's income tax liability.

(c) No credit shall be allowed under this Code section with respect to any driver education expenses either deducted or subtracted by the taxpayer in arriving at Georgia taxable net income or with respect to any driver education expenses for which amounts were excluded from Georgia net taxable income.

(d) No credit shall be allowed under this Code section unless the taxpayer has obtained written proof of the successful completion of the course of driver education by the dependent minor child and the amount expended by the taxpayer for such course.

(e) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-29.5, enacted by Ga. L. 2000, p. 451, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2005, p. 334, § 29-4/HB 501; Ga. L. 2008, p. 898, § 8/HB 1151.)

Cross references. — Driver education course accepted for Carnegie unit elective credits, § 20-2-151.2. Grants for driver education courses for secondary school students, § 20-2-257.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, this Code section, enacted as Code Section 48-7-29.4, was redesignated as Code Section 48-7-29.5.

Editor's notes. — Ga. L. 2000, p. 451,

§ 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

48-7-29.6. Tax credit for qualified low-income building.

(a) As used in this Code section, the term:

(1) "Federal housing tax credit" means the federal tax credit as provided in Section 42 of the Internal Revenue Code of 1986, as amended.

(2) "Median income" means those incomes that are determined by the federal Department of Housing and Urban Development guidelines and adjusted for family size.

(3) "Project" means a housing project that has restricted rents that do not exceed 30 percent of median income for at least 40 percent of its units occupied by persons or families having incomes of 60 percent or less of the median income, or at least 20 percent of the units occupied by persons or families having incomes of 50 percent or less of the median income.

(4) "Qualified basis" means that portion of the tax basis of a qualified Georgia project eligible for the federal housing tax credit, as that term is defined in Section 42 of the Internal Revenue Code of 1986, as amended.

(5) "Qualified Georgia project" means a qualified low-income building as that term is defined in Section 42 of the Internal Revenue Code of 1986, as amended, that is located in Georgia.

(b)(1) A state tax credit against the tax imposed by this article, to be termed the Georgia housing tax credit, shall be allowed with respect to each qualified Georgia project placed in service after January 1, 2001. The amount of such credit shall, when combined with the total amount of credits authorized under Code Section 33-1-18, in no event exceed an amount equal to the federal housing tax credit allowed with respect to such qualified Georgia project.

(2)(A) If under Section 42 of the Internal Revenue Code of 1986, as amended, a portion of any federal housing tax credit taken on a project is required to be recaptured as a result of a reduction in the

qualified basis of such project, the taxpayer claiming any state tax credit with respect to such project shall also be required to recapture a portion of any state tax credit authorized by this Code section. The state recapture amount shall be equal to the proportion of the state tax credit claimed by the taxpayer that equals the proportion the federal recapture amount bears to the original federal housing tax credit amount subject to recapture. The tax credit under this Code section shall not be subject to recapture if such recapture is due solely to the sale or transfer of any direct or indirect interest in such qualified Georgia project.

(B) In the event that recapture of any Georgia housing tax credit is required, any amended return submitted to the commissioner as provided in this Code section shall include the proportion of the state tax credit required to be recaptured, the identity of each taxpayer subject to the recapture, and the amount of tax credit previously allocated to such taxpayer.

(3) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's next three succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(4) The tax credit allowed under this Code section, and any recaptured tax credit, shall be allocated among some or all of the partners, members, or shareholders of the entity owning the project in any manner agreed to by such persons, whether or not such persons are allocated or allowed any portion of the federal housing tax credit with respect to the project.

(c) The commissioner and the state department designated by the Governor as the state housing credit agency for purposes of Section 42(h) of the Internal Revenue Code of 1986, as amended, shall each be authorized to promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-29.6, enacted by Ga. L. 2000, p. 845, § 1; Ga. L. 2001, p. 1098, § 2; Ga. L. 2001, p. 1181, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, this Code section, enacted as Code Section 48-7-29.4, was redesignated as Code Section 48-7-29.6.

Editor's notes. — Ga. L. 2000, p. 845, § 2, not codified by the General Assembly, provides that this Code section shall be

applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2001, p. 1181, § 3, effective January 1, 2002, not codified by the General Assembly, provides that the 2001 amendment shall be applicable to all taxable years beginning on or after January 1, 2002.

48-7-29.7. Tax credit for depository financial institutions.

(a) There shall be a dollar-for-dollar credit against the state income tax liability of depository financial institutions which shall be equal to the amount of taxes, if any, paid by such taxpayers pursuant to Code Section 48-6-93 and Code Section 48-6-95. If the liability of any such institutions under the taxes authorized by Code Section 48-6-93 and Code Section 48-6-95 exceeds the income tax liability of such institution for any year, the amount of any unused credit under this Code section may be credited over a period of five years from the tax year in which the unused credit arose. If the assets of an institution are acquired by another institution in a transaction described in Section 381(a) of the Internal Revenue Code of 1986, the acquiring institution shall succeed to and take into account any unused credit of the distributor or transferor institution. If a depository financial institution has elected Subchapter "S" status pursuant to the conditions specified in subparagraph (b)(7)(B) of Code Section 48-7-21, the credits authorized by this subsection may be passed through on a pro rata basis to the institution's shareholders. If the amount of any such pro rata credit exceeds a shareholder's individual income tax liability, then such unused credit may be credited over a period of five years from the tax year in which the unused credit arose. No such credit shall be allowed the taxpayer against prior years' tax liability.

(b) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section. (Code 1981, § 48-7-29.7, enacted by Ga. L. 2000, p. 1445, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, this Code section, enacted as Code Section 48-7-29.4, was redesignated as Code Section 48-7-29.7.

Editor's notes. — Ga. L. 2000, p. 1445, § 5, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2001.

48-7-29.8. Tax credits for the rehabilitation of historic structures; conditions and limitations.

(a) As used in this Code section, the term:

(1) "Certified rehabilitation" means repairs or alterations to a certified structure which are certified by the Department of Natural Resources as meeting the United States Secretary of the Interior's Standards for Rehabilitation or the Georgia Standards for Rehabilitation as provided by the Department of Natural Resources.

(2) "Certified structure" means a historic building or structure that is individually listed in the Georgia Register of Historic Places or is

certified by the Department of Natural Resources as contributing to the historic significance of a Georgia Register Historic District.

(3) "Historic home" means a certified structure which, or any portion of which is or will, within a reasonable period, be owned and used as the principal residence of the person claiming the tax credit allowed under this Code section. Historic home shall include any structure or group of structures that constitute a multifamily or multipurpose structure, including a cooperative or condominium. If only a portion of a building is used as such person's principal residence, only those qualified rehabilitation expenditures that are properly allocable to such portion shall be deemed to be made to a historic home.

(4) "Qualified rehabilitation expenditure" means any amount properly chargeable to a capital account expended in the substantial rehabilitation of a structure that by the end of the taxable year in which the certified rehabilitation is completed is a certified structure. This term does not include the cost of acquisition of the certified structure, the cost attributable to enlargement or additions to an existing building, site preparation, or personal property.

(5) "Substantial rehabilitation" means rehabilitation of a certified structure for which the qualified rehabilitation expenditures, at least 5 percent of which must be allocable to the exterior during the 24 month period selected by the taxpayer ending with or within the taxable year, exceed:

(A) For a historic home, the lesser of \$25,000.00 or 50 percent of the adjusted basis of the property as defined in subparagraph (a)(1)(B) of Code Section 48-5-7.2; or, in the case of a historic home located in a target area \$5,000.00; or

(B) For any other certified structure, the greater of \$5,000.00 or the adjusted basis of the property.

(6) "Target area" means a qualified census tract under Section 42 of the Internal Revenue Code of 1986, found in the United States Department of Housing and Urban Development document number N-94-3821; FR-3796-N-01.

(b) A taxpayer shall be allowed a tax credit against the tax imposed by this chapter for the taxable year in which the certified rehabilitation is completed:

(1) In the case of a historic home, equal to 25 percent of qualified rehabilitation expenditures, except that, in the case of a historic home located within a target area, an additional credit equal to 5 percent of qualified rehabilitation expenditures shall be allowed; and

(2) In the case of any other certified structure, equal to 25 percent of qualified rehabilitation expenditures.

(c)(1) In no event shall credits for a historic home exceed \$100,000.00 in any 120 month period.

(2) In no event shall credits for a certified structure exceed \$300,000.00 in any 120 month period.

(d) In order to be eligible to receive the credit authorized under subsection (b) of this Code section, a taxpayer must attach to the taxpayer's state tax return a copy of the certification of the Department of Natural Resources verifying that the improvements to the certified structure are consistent with the Department of Natural Resources Standards for Rehabilitation.

(e)(1) If the credit allowed under this Code section in any taxable year exceeds the total tax otherwise payable by the taxpayer for that taxable year, the taxpayer may apply the excess as a credit for succeeding years until the earlier of:

(A) The full amount of the excess is used; or

(B) The expiration of the tenth taxable year after the taxable year in which the certified rehabilitation has been completed.

(2) No such credit shall be allowed the taxpayer against prior years' tax liability.

(f) In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, a 60 month period may be substituted for the 24 month period provided for in paragraph (5) of subsection (a) of this Code section.

(g)(1) Except as otherwise provided in subsection (h) of this Code section, in the event a tax credit under this Code section has been claimed and allowed the taxpayer, upon the sale or transfer of the certified structure, the taxpayer shall be authorized to transfer the remaining unused amount of such credit to the purchaser of such certified structure. If a historic home for which a certified rehabilitation has been completed by a nonprofit corporation is sold or transferred, the full amount of the credit to which the nonprofit corporation would be entitled if taxable shall be transferred to the purchaser or transferee at the time of sale or transfer.

(2) Such purchaser shall be subject to the limitations of subsection (e) of this Code section. Such purchaser shall file with such purchaser's tax return a copy of the approval of the rehabilitation by the Department of Natural Resources as provided in subsection (d) and a copy of the form evidencing the transfer of the tax credit.

(3) Such purchaser shall be entitled to rely in good faith on the information contained in and used in connection with obtaining the approval of the credit including, without limitation, the amount of qualified rehabilitation expenditures.

(h)(1) If an owner other than a nonprofit corporation sells a historic home within three years of receiving the credit, the seller shall recapture the credit to the Department of Revenue as follows:

(A) If the property is sold within one year of receiving the credit, the recapture amount will equal the lesser of the credit or the net profit of the sale;

(B) If the property is sold within two years of receiving the credit, the recapture amount will equal the lesser of two-thirds of the credit or the net profit of the sale; or

(C) If the property is sold within three years of receiving the credit, the recapture amount will equal the lesser of one-third of the credit or the net profit of the sale.

(2) The recapture provisions of this subsection shall not apply to a sale resulting from the death of the owner.

(i) The tax credit allowed under this Code section, and any recaptured tax credit, shall be allocated among some or all of the partners, members, or shareholders of the entity owning the project in any manner agreed to by such persons, whether or not such persons are allocated or allowed any portion of any other tax credit with respect to the project.

(j) The Department of Natural Resources and the Department of Revenue shall prescribe such regulations as may be appropriate to carry out the purposes of this Code section.

(k) The Department of Natural Resources shall report, on an annual basis, on the overall economic activity, usage, and impact to the state from the rehabilitation of eligible properties for which credits provided by this Code section have been allowed. (Code 1981, § 48-7-29.8, enacted by Ga. L. 2002, p. 954; § 1; Ga. L. 2008, p. 1179, §§ 1, 2/HB 851.)

Editor's notes. — Ga. L. 2002, p. 954, § 5, not codified by the General Assembly, provides that this Code section is applicable to taxable years beginning on or after January 1, 2004.

Ga. L. 2008, p. 1179, § 3/HB 851, not codified by the General Assembly, provides that the 2008 amendment to this Code section shall apply to all taxable

years beginning on or after January 1, 2009.

Administrative rules and regulations. — Georgia state income tax credit program for rehabilitated historic property, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Chapter 391-5-14.

48-7-29.9. Tax credit for qualified life insurance premiums for National Guard and Air National Guard members.

(a) As used in this Code section, the term:

(1) “Active duty” means full-time duty in the United States armed forces, other than active duty for training, for a period of more than 90 consecutive days.

(2) “Active duty for training” means full-time duty in the United States armed forces for a period of more than 90 consecutive days for training purposes performed by members of the National Guard and Air National Guard who are residents of this state.

(3) “Qualified life insurance” means insurance coverage through the Servicemembers’ Group Life Insurance Program administered by the United States Department of Veterans Affairs for the maximum benefit amount available under such program for the loss of life of a member of the National Guard or Air National Guard who is a resident of this state while on active duty or active duty for training.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 in an amount not to exceed the amount expended for qualified life insurance premiums.

(c) The credit provided under this subsection:

(1) Shall be claimed and allowed in the year in which the majority of such days are served. In the event an equal number of consecutive days are served in two calendar years, then the exclusion shall be claimed and allowed in the year in which the ninetieth day occurs; and

(2) Shall apply with respect to each taxable year in which such member serves for such qualifying period of time.

(d) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer’s income tax liability. Any unused tax credit shall be allowed the taxpayer against succeeding years’ tax liability. No such credit shall be allowed the taxpayer against prior years’ tax liability.

(e) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section. (Code 1981, § 48-7-29.9, enacted by Ga. L. 2005, p. 220, § 2/HB 538; Ga. L. 2009, p. 8, § 48/SB 46.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, in paragraphs (a)(1) and (2), “full-time duty” was substituted for “full time duty”.

48-7-29.10. Credit for qualified child and dependent care expenses; carryover of credit prohibited.

(a) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 for qualified child and dependent care expenses. Such credit shall be determined by applying a percentage to the amount of the credit provided for in Section 21 of the Internal Revenue Code which is claimed and allowed pursuant to the Internal Revenue Code. Such percentage shall be:

(1) Ten percent for all taxable years beginning on or after January 1, 2006, and prior to January 1, 2007;

(2) Twenty percent for all taxable years beginning on or after January 1, 2007, and prior to January 1, 2008; and

(3) Thirty percent for all taxable years beginning on or after January 1, 2008.

(b) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall not be allowed to be carried forward to apply to the taxpayer's succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(c) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-29.10, enacted by Ga. L. 2006, p. 64, § 1/HB 1080.)

Editor's notes. — Ga. L. 2006, p. 64, § 2/HB 1080, not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2006.

48-7-29.11. Income tax credits for teleworking; definitions; powers and duties.

(a) As used in this Code section, the term:

(1) "Eligible telework expenses" means expenses incurred during the calendar year pursuant to a telework agreement, up to a limit of \$1,200.00 for each participating employee, to enable a participating employee to begin to telework, which expenses are not otherwise the subject of a deduction from income claimed by the employer in any tax year. Such expenses shall include, but not be limited to, expenses paid or incurred to purchase computers, computer related hardware and software, modems, data processing equipment, telecommunications equipment, high-speed Internet connectivity equipment, computer security software and devices, and all related delivery, instal-

lation, and maintenance fees. Such expenses shall not include replacement costs for computers, computer related hardware and software, modems, data processing equipment, telecommunications equipment, or computer security software and devices at the principal place of business when that equipment is relocated to the telework site. Such expenses shall not include expenses for which a credit is claimed under any other provision of this article. Such expenses may be incurred only once per employee. Such expenses may be incurred directly by the employer on behalf of the participating employee or directly by the participating employee and subsequently reimbursed by the employer.

(2) "Employer" means any employer upon whom an income tax is imposed by this article.

(3) "Participating employee" means an employee who has entered into a telework agreement with his or her employer on or after July 1, 2007. This term shall not include an individual who is self-employed or an individual who ordinarily spends a majority of his or her workday at a location other than the employer's principal place of business.

(4) "Telework" means to perform normal and regular work functions on a workday that ordinarily would be performed at the employer's principal place of business at a different location, thereby eliminating or substantially reducing the physical commute to and from that employer's principal place of business. This term shall not include home based businesses, extensions of the workday, or work performed on a weekend or holiday.

(5) "Telework agreement" means an agreement signed by the employer and the participating employee, on or after July 1, 2007, that defines the terms of a telework arrangement, including the number of days per year the participating employee will telework, as provided in subsection (b) of this Code section in order to qualify for the credit, and any restrictions on the place from which the participating employee will telework.

(6) "Telework assessment" means an optional assessment leading to the development of policies and procedures necessary to implement a formal telework program which would qualify the employer for the credit provided in subsection (b) of this Code section, including but not limited to a workforce profile, a telework program business case and plan, a detailed accounting of the purpose, goals, and operating procedures of the telework program, methodologies for measuring telework program activities and success, and a deployment schedule for increasing telework activity.

(b) For taxable years beginning or ending on or after January 1, 2008, and prior to January 1, 2012, an employer shall be allowed a state

income tax credit against the tax imposed by Code Section 48-7-20 or Code Section 48-7-21 for a percentage of eligible telework expenses incurred in the corresponding calendar year. The amount of such credit shall be calculated as follows:

(1) The credit shall be equal to 100 percent of the eligible telework expenses incurred pursuant to a telework agreement requiring the participating employee to telework at least 12 days per month if the employer's principal place of business is located in an area designated by the United States Environmental Protection Agency as a nonattainment area under the federal Clean Air Act, 42 U.S.C. Section 7401 et seq.;

(2) The credit shall be equal to 75 percent of the eligible telework expenses incurred pursuant to a telework agreement requiring the participating employee to telework at least 12 days per month; or

(3) The credit shall be equal to 25 percent of the eligible telework expenses incurred pursuant to a telework agreement requiring the participating employee to telework at least five days per month.

(c)(1) In addition to the credit provided by subsection (b) of this Code section, an employer conducting a telework assessment on or after July 1, 2007, shall be allowed a credit in the calendar year of implementation of the employer's formal telework program against the tax imposed by Code Section 48-7-20 or Code Section 48-7-21 for 100 percent of the cost, up to a maximum credit of \$20,000.00 per employer, of preparing the assessment. Such costs shall not be eligible for such credit if they are otherwise the subject of a deduction from income claimed by the employer in any tax year. Costs incurred on or after July 1, 2007, and before January 1, 2008, shall be treated as being incurred on January 1, 2008, for purposes of this Code section. The credit provided by this subsection is intended to include program planning expenses, including direct program development and training costs, raw labor costs, and professional consulting fees; the credit shall not include expenses for which a credit is claimed under any other provision of this article. This credit shall be allowed only once per employer.

(2) All telework assessments eligible for a state income tax credit under this subsection shall meet standards for eligibility promulgated by the commissioner.

(d) In no event shall the total amount of any tax credit under this Code section for a taxable year exceed the employer's income tax liability. No unused tax credit shall be allowed to be carried forward to apply to the employer's succeeding years' tax liability. No such tax credit shall be allowed the employer against prior years' tax liability.

(e)(1) An employer seeking to claim a tax credit provided for under subsections (b) and (c) of this Code section must submit an applica-

tion to the commissioner for tentative approval of the tax credit provided for in subsections (b) and (c) of this Code section between September 1 and October 31 of the year preceding the calendar year for which the tax credit is to be earned. The commissioner shall promulgate the rules and forms on which the application is to be submitted. Amounts specified on such application shall not be changed by the employer after the application is approved by the commissioner. Such applications must certify that the employer would not have incurred the eligible telework expenses mentioned therein but for the availability of the tax credit. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section.

(2) The commissioner shall provide tentative approval of the applications by the date provided in paragraph (3) of this subsection. In no event shall the aggregate amount of tax credits approved by the commissioner for all qualified employers under this Code section in a calendar year exceed:

- (A) For credits earned in calendar year 2008, \$2 million;
- (B) For credits earned in calendar year 2009, \$2 million;
- (C) For credits earned in calendar year 2010, \$2.5 million; and
- (D) For credits earned in calendar year 2011, \$2.5 million.

(3) The department shall notify each employer of the tax credits tentatively approved and allocated to such employer by December 31 of the year in which the application was submitted. In the event that the credit amounts on the tax credit applications filed with the commissioner exceed the maximum aggregate limit of tax credits under this subsection, then the tax credits shall be allocated among the employers who filed a timely application on a pro rata basis based upon the amounts otherwise allowed by this Code section. Once the tax credit application has been approved and the amount approved has been communicated to the applicant, the employer may make purchases approved for the tax credit at any time during the calendar year following the approval of the application. The employer may then apply the amount of the approved tax credit to its tax liability for the tax year or years for which the approved application applies. In the event the employer has a tax year other than a calendar year and the calendar year expenses are incurred in more than one taxable year, the credit shall be applied to each taxable year based upon when the expenses were incurred.

(f) Notwithstanding the provisions of Code Sections 48-2-15, 48-7-60, and 48-7-61, the commissioner shall make available a public report

disclosing the employer names and amounts of credit claimed under this Code section as follows:

- (1) On or before December 31, 2010, for credits allowed in calendar year 2008;
- (2) On or before December 31, 2011, for credits allowed in calendar year 2009;
- (3) On or before December 31, 2012, for credits allowed in calendar year 2010; and
- (4) On or before December 31, 2013, for credits allowed in calendar year 2011.

(g) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-29.11, enacted by Ga. L. 2006, p. 242, § 1/HB 194; Ga. L. 2007, p. 47, § 48/SB 103; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 999, §§ 1, 2, 3/HB 186.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 48-7-29.10, as enacted by Ga. L. 2006, p. 242, § 1, was redesignated as Code Section 48-7-29.11; and “July 1,

2007” was substituted for “the effective date of this Code section” in paragraphs (a)(3) and (a)(5) and twice in paragraph (c)(1).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 425 et seq.

48-7-29.12. Tax credit for qualified donation of real property; carryover of credit; appraisals; transfer of credit; penalty.

(a) As used in this Code section, the term:

(1) “Conservation easement” means a nonpossessory interest in real property imposing limitations or affirmative obligations, the purposes of which are consistent with at least two conservation purposes.

(2) “Conservation purpose” means any of the following:

(A) Water quality protection for wetlands, rivers, streams, or lakes;

(B) Protection of wildlife habitat consistent with state wildlife conservation policies;

(C) Protection of outdoor recreation consistent with state outdoor recreation policies;

(D) Protection of prime agricultural or forestry lands; and

(E) Protection of cultural sites, heritage corridors, or archeological and historic resources.

(3) "Donated property" means the real property of which a qualified donation is made pursuant to this Code section.

(4) "Eligible donor" means any person who owns an interest in a qualified donation.

(5) "Fair market value" means the value of the donated property as determined pursuant to subsections (c.1) and (c.2) of this Code section.

(6) "Qualified donation" means the fee simple conveyance to the state; a county, a municipality, or a consolidated government of this state; the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code and, beginning on January 1, 2014, accredited by the Land Trust Accreditation Commission of 100 percent of all right, title, and interest in the entire parcel of donated real property, and the donation is accepted by such state, county, municipality, consolidated government, federal government, or bona fide charitable nonprofit organization for use in a manner consistent with at least two conservation purposes. Such term shall also include the donation to and acceptance by the state; a county, a municipality, or a consolidated government of this state; the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code and, beginning on January 1, 2014, accredited by the Land Trust Accreditation Commission of a conservation easement. Any real property which is otherwise required to be dedicated pursuant to local government regulations or ordinances or to increase building density levels shall not be eligible as a qualified donation under this Code section. Any real property which is used for or associated with the playing of golf or is planned to be so used or associated shall not be eligible as a qualified donation under this Code section.

(7) "Related person" has the meaning provided by Code Section 48-7-28.3.

(8) "Substantial valuation misstatement" means a valuation such that the claimed value of any property on the appraisal as submitted to the State Properties Commission is 150 percent or more of the amount determined to be the correct amount of such valuation pursuant to subsections (c.1) and (c.2) of this Code section.

(b)(1) A taxpayer shall be allowed a state income tax credit against the tax imposed by Code Section 48-7-20 or 48-7-21 for each qualified donation under this Code section.

(2) Except as otherwise provided in paragraph (3) of this subsection and in subsection (d) of this Code section, such credit shall be limited to an amount not to exceed the lesser of \$500,000.00, 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market value and the amount paid to the donor if the donation is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

(3) Except as otherwise provided in subsection (d) of this Code section, in the case of a taxpayer whose net income is determined under Code Section 48-7-23, the aggregate total credit allowed to all partners in a partnership shall be limited to an amount not to exceed the lesser of \$500,000.00, 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market value and the amount paid to the donor if the donation is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

(c) No tax credit shall be allowed under this Code section unless the taxpayer files with the taxpayer's income tax return a copy of the State Property Commission's determination and a copy of a certification issued by the Department of Natural Resources that the donated property is suitable for conservation purposes and meets the following additional requirements, where applicable:

(1) Subdivision is prohibited for a donated property of less than 500 acres and limited to one subdivision for a donated property of 500 acres or more;

(2) New construction on donated property of structures, roads, impoundments, ditches, dumping, or any other activity that would harm the protected conservation values of such donation is prohibited on such property;

(3) New construction on donated property within 150 feet of any perennial or intermittent stream is prohibited;

(4) A buffer of at least 100 feet on each side of any perennial streams on donated property which ensures at least 75 percent tree canopy evenly distributed after harvest is maintained and a buffer of at least 50 feet on each side of any intermittent streams on donated property which ensures at least 75 percent tree canopy evenly distributed after harvest is maintained;

(5) Timber and agricultural activities undertaken on the donated property are prohibited unless in accordance with best management

practices published by the State Forestry Commission or the Soil and Water Conservation Commission, as the case may be;

(6) New construction on donated property causing more than 1 percent of such property's total surface area to be covered by impervious surfaces is prohibited;

(7) Mining on the property is prohibited; and

(8) Planting on the donated property of non-native invasive species listed in Category 1, Category 1 Alert, or Category 2 of the "List of Non-Native Invasive Plants in Georgia" developed by the Georgia Exotic Pest Council is prohibited.

(c.1) For each application for certification, the Department of Natural Resources shall require submission of an appraisal of the qualified donation by the taxpayer along with a nonrefundable \$5,000.00 application fee; provided, however, that the nonrefundable application fee for property donated to the state shall be 1 percent of the total value of the donation, unless such donation is being made to qualify the state for a federal or state grant. The appraisal required by this subsection shall be a full narrative appraisal and include:

(1) A certification page, as established by the Uniform Standards of Professional Appraisal Practice, signed by the appraiser; and

(2) An affidavit signed by the appraiser which includes a statement specifying:

(A) The value of the unencumbered property, the total value of the qualified donation in gross, and an accompanying statement identifying the methods used to determine such values;

(B) Whether a subdivision analysis was used in the appraisal;

(C) Whether the landowner or related persons own any other property, the value of which is increased as a result of the donation; and

(D) That the appraiser is certified pursuant to Chapter 39A of Title 43.

Appraisals received by the Department of Natural Resources shall be forwarded to the State Properties Commission for review. The State Properties Commission shall approve the appraisal amount submitted or recommend a lower amount based on its review and inform the Department of Natural Resources of its determination. The State Properties Commission shall be authorized to promulgate any rules and regulations necessary to administer the provisions of this subsection. Any appraisal deemed to contain a substantial valuation misstatement shall be submitted to the Georgia Real Estate Commission for further

investigation and disciplinary action. Upon receipt of the State Properties Commission's determination, the Department of Natural Resources may proceed with the certification process.

(c.2) The Board of Natural Resources shall promulgate any rules and regulations necessary to implement and administer subsections (c) and (c.1) of this Code section. A final determination by the Department of Natural Resources or the State Properties Commission shall be subject to review and appeal under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d)(1) In no event shall the total amount of any tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. In no event shall the total amount of the tax credit allowed to a taxpayer under subsection (b) of this Code section exceed \$250,000.00 with respect to tax liability determined under Code Section 48-7-20 or \$500,000.00 with respect to tax liability determined under Code Section 48-7-21. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's succeeding ten years' tax liability. However, the amount in excess of such annual dollar limits shall not be eligible for carryover to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(2) Only one qualified donation may be made with respect to any real property that was, in the five years prior to donation, within the same tax parcel of record, except that a subsequent donation may be made by a person who is not a related person with respect to any prior eligible donors of any portion of such tax parcel.

(d.1) Any tax credits under this Code section earned by a taxpayer in the taxable years beginning on or after January 1, 2013, and previously claimed but not used by such taxpayer against such taxpayer's income tax may be transferred or sold in whole or in part by such taxpayer to another Georgia taxpayer, subject to the following conditions:

(1) The transferor may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(2) The transferor shall submit to the department a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such transferor's tax credit balance prior to transfer, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the department;

(3) Failure to comply with this subsection shall result in the disallowance of the tax credit until the taxpayer is in full compliance;

(4) Any unused credit may be carried forward to subsequent taxable years provided that the transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned; and

(5) A transferee shall have only such rights to claim and use the tax credit that were available to the transferor at the time of the transfer. To the extent that such transferor did not have rights to claim and use the tax credit at the time of the transfer, the department shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against the transferor.

(e)(1) Whenever:

(A) Any person prepares an appraisal of the value of property and knows, or reasonably should have known, that the appraisal would be used in connection with a return or a claim for refund claiming a tax credit under this Code section; and

(B) The claimed value of the property on such appraisal as submitted to the State Properties Commission results in a substantial valuation misstatement with respect to such property for purposes of claiming a tax credit under this Code section,

then such person shall pay a penalty in the amount determined under paragraph (2) of this subsection.

(2) The amount of the penalty imposed under paragraph (1) of this subsection on any person with respect to an appraisal shall be equal to the lesser of:

(A) The greater of:

(i) Twenty-five percent of the difference between the amount of the tax credit claimed on the taxpayer's return or claim for refund and the amount of the tax credit to which the taxpayer is actually entitled, to the extent the difference is attributable to the misstatement described in paragraph (1) of this subsection; or

(ii) Ten thousand dollars; or

(B) One hundred twenty-five percent of the gross income received by the person described in paragraph (1) of this subsection for the preparation of the appraisal.

(3) No penalty shall be imposed under paragraph (1) of this subsection if the person establishes to the satisfaction of the commissioner that the value established in the appraisal was more likely than not the proper value.

(4) Except as otherwise provided, the penalty provided by this subsection shall be in addition to any other penalties provided by law. The amount of any penalty under this subsection shall be assessed within three years after the return or claim for refund with respect to which the penalty is assessed was filed, and no proceeding in court without assessment for the collection of such penalty shall be begun after the expiration of such period. Any claim for refund of an overpayment of the penalty assessed under this subsection shall be filed within three years from the time the penalty was paid.

(f) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution.

(g) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-29.12, enacted by Ga. L. 2006, p. 351, § 1/HB 1107; Ga. L. 2008, p. 101, § 1/HB 1274; Ga. L. 2011, p. 297, § 3/HB 346; Ga. L. 2012, p. 257, § 3-1/HB 386; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2011 amendment, effective January 1, 2012, added subsection (d.1). See editor's note for applicability.

The 2012 amendment, effective January 1, 2013, rewrote this Code section. See editor's note for applicability.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, deleted "Code Section" preceding "48-7-21" in paragraph (b)(1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 48-7-29.10, as enacted by Ga. L. 2006, p. 351, § 1, was redesignated as Code Section 48-7-29.12.

Editor's notes. — Ga. L. 2006, p. 351, § 2/HB 1107, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 2006.

Ga. L. 2008, p. 101, § 2/HB 1274, not codified by the General Assembly, provides, in part, that the 2008 amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2011, p. 297, § 5(d)/HB 346, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall become effective

on January 1, 2012, and shall apply to all taxable years beginning on or after January 1, 2012.

Ga. L. 2012, p. 257, § 7-1(e)/HB 386, not codified by the General Assembly, provides that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 112 (2012).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 422, 425, 428.

48-7-29.13. Tax credit for qualified health insurance expenses.

(a) As used in this Code section, the term:

(1) “Qualified health insurance” means a high deductible health plan as defined by Section 223 of the Internal Revenue Code.

(2) “Qualified health insurance expense” means the expenditure of funds of at least \$250.00 annually for health insurance premiums for qualified health insurance.

(3) “Taxpayer” means an employer who employs directly, or who pays compensation to individuals whose compensation is reported on Form 1099, 50 or fewer persons and for whom the taxpayer provides high deductible health plans as defined by Section 223 of the Internal Revenue Code and in which such employees are enrolled.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 or 48-7-21, as applicable, for qualified health insurance expenses in an amount of \$250.00 for each employee enrolled for 12 consecutive months in a qualified health insurance plan if such qualified health insurance is made available to all of the employees and compensated individuals of the employer pursuant to the applicable provisions of Section 125 of the Internal Revenue Code.

(c) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer’s income tax liability. Any unused tax credit shall be allowed the taxpayer against succeeding years’ tax liability. No such credit shall be allowed the taxpayer against prior years’ tax liability.

(d) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

(e) The credit allowed by this Code section shall apply only with regard to qualified health insurance expenses. (Code 1981, § 48-7-29.13, enacted by Ga. L. 2008, p. 292, § 5/HB 977; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 652, § 5/HB 410.)

Cross references. — Georgia Affordable HSA Eligible High Deductible Health Plan, T. 33, C. 51.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 48-7-29.13, as enacted by Ga. L.

2008, p. 841, § 1, was redesignated as Code Section 48-7-29.14; Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 942, § 1, was redesignated as Code Section 48-7-29.15; and Code Section 48-7-29.13, as enacted by Ga. L. 2008, p.

1108, § 2, was redesignated as Code Section 48-7-29.16.

Editor's notes. — Ga. L. 2008, p. 292, § 6(a)/HB 977, not codified by the General Assembly, provides, in part, that this Code section shall be applicable to all taxable years beginning on or after January 1, 2009.

Ga. L. 2009, p. 652, § 6(a)/HB 410, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2009.

48-7-29.14. Income tax credit for clean energy property.

(a) As used in this Code section, the term:

(1) "Authority" means the Georgia Environmental Finance Authority.

(2) "Business property" means tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for federal income tax purposes. The term does not include, however, a luxury passenger automobile taxable under Section 4001 of the Internal Revenue Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.

(3) "Clean energy property" includes any of the following:

(A) Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalinization, or the production of industrial or commercial process heat, as well as related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy;

(B) Energy Star certified geothermal heat pump systems;

(C) Energy efficient projects as follows:

(i) Lighting retrofit projects. "Lighting retrofit project" means a lighting retrofit system that employs dual switching (ability to switch roughly half the lights off and still have fairly uniform light distribution), delamping, daylighting, relamping, or other controls or processes which reduce annual energy and power consumption by 30 percent compared to the American Society of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE 90.1.2004); and

(ii) Energy efficient buildings. "Energy efficient building" means for other than single-family residential property new or retrofitted buildings that are designed, constructed, and certified to exceed the standards set forth in the American Society of

Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE 90.1.2004) by 30 percent;

(D) Wind equipment required to capture and convert wind energy into electricity or mechanical power as well as related devices that may be required for converting, conditioning, and storing the electricity produced by wind equipment; and

(E) Biomass equipment to convert wood residuals into electricity through gasification and pyrolysis.

(4) "Cost" means:

(A) In the case of clean energy property owned by the taxpayer, cost is the aggregate funds actually invested and expended by a taxpayer to put into service the clean energy property; and

(B) In the case of clean energy property the taxpayer leases from another, cost is eight times the net annual rental rate, which is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(5) "Installation" means the year in which the clean energy property is put into service and becomes eligible for a tax credit allowed by this Code section.

(6) "Renewable biomass qualified facility" means a renewable biomass qualified facility as defined by the Federal Energy Regulatory Commission which facility meets the open loop biomass standards promulgated pursuant to Section 45 of the Internal Revenue Code.

(7) "Wood residuals" means wood residuals that include land-clearing residue, urban wood residue, and pellets and do not include wood from any United States national forest.

(b) A tax credit under this Code section is subject to the following limits:

(1) A tax credit is allowed against the tax imposed under this article to a taxpayer for the construction, purchase, or lease of clean energy property that is placed into service in this state between July 1, 2008, and December 31, 2014; provided, however, this credit shall be further subject to the following conditions and limitations:

(A) A credit allowed by this Code section shall be taken for the taxable year in which the clean energy property is installed and may be taken against income tax or, if the taxpayer is an insurance company, against gross premium tax; provided, however, that for any credit under this Code section which is allowed for calendar year 2012, 2013, or 2014, the entire credit may not be taken for the

year in which the property is placed in service but must be taken in four equal installments over four successive taxable years beginning with the taxable year in which the credit is allowed;

(B) A taxpayer that claims a credit allowed under this subsection shall not be eligible to claim any other credit under this subsection with respect to the same clean energy property;

(C) A taxpayer may not take the credit allowed in this subsection for clean energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this subsection with respect to the same clean energy property; and

(D) In no event shall the amount of the tax credits allowed by this Code section for a taxable year exceed the taxpayer's liability for such taxes. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the installment of the clean energy property occurred. No such credit shall be allowed the taxpayer against prior years' tax liability.

To claim a credit allowed by this paragraph, the taxpayer shall provide any information required by the authority or department. Every taxpayer claiming a credit under this Code section shall maintain and make available for inspection by the authority or department any records that either entity considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection;

(2) A taxpayer who transports or diverts wood residuals to a renewable biomass qualified facility shall be allowed a credit against the tax imposed by this article in an amount not to exceed the actual amount certified by the State Forestry Commission to the taxpayer. The value of such credit shall be determined on a per tonnage basis. Such certification shall be based upon vouchers provided to the taxpayer by the renewable biomass qualified facility to whom the wood residuals are provided for the purpose of providing bioelectric power to a third party. The State Forestry Commission shall calculate and attribute a dollar value to such wood residuals;

(3) In no event shall the total amount of tax credits allowed by this subsection exceed:

(A) For calendar year 2008, \$2.5 million;

(B) For calendar year 2009, \$2.5 million;

- (C) For calendar year 2010, \$2.5 million;
- (D) For calendar year 2011, \$2.5 million;
- (E) For calendar year 2012, \$5 million;
- (F) For calendar year 2013, \$5 million; and
- (G) For calendar year 2014, \$5 million.

(4)(A) A taxpayer seeking to claim any tax credit provided for under this Code section must submit an application to the commissioner for tentative approval of such tax credit. The commissioner shall promulgate the rules and forms on which the application is to be submitted. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section within 60 days after receiving such application.

(B) The commissioner shall allow the tax credits on a first come, first served basis. In no event shall the aggregate amount of tax credits approved by the commissioner for all taxpayers under this Code section in a calendar year exceed the limitations specified in paragraph (3) of this subsection. In the event a taxpayer filed a timely application for such credit but is not allowed all or part of the credit amount such taxpayer would be authorized to receive because the limitations specified in paragraph (3) of this subsection have been reached, the commissioner shall add such taxpayer to a priority waiting list of applications, prioritized by the date of the taxpayer's first filed application. With respect to the credit allocation in subsequent years, taxpayers on the priority waiting list shall have priority over other taxpayers who apply for the credit for an installation in the subsequent years;

(5) The credit allowed by this subsection shall not exceed the following amounts:

(A) For all types of clean energy property placed into service for any purpose other than single-family residential, the credit allowed by this subsection may not exceed the lesser of 35 percent of the cost of the clean energy property described in subparagraphs (a)(3)(A) through (a)(3)(C) of this Code section or the following credit amounts for any clean energy property:

(i) A ceiling of \$500,000.00 per installation applies to solar energy equipment for solar electric (photovoltaic), other solar thermal electric applications, and active space heating, wind equipment, and biomass equipment as described in subparagraphs (a)(3)(A), (a)(3)(D), and (a)(3)(E) of this Code section;

(ii) The sum of \$100,000.00 per installation applies to clean energy property related to solar energy equipment for domestic

water heating as described in subparagraph (a)(3)(A) of this Code section which is certified for performance by the Solar Rating Certification Corporation, Florida Solar Energy Center, or by a comparable entity approved by the authority to have met the certification of Solar Rating Certification Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal collectors;

(iii) For Energy Star certified geothermal heat pump systems as described in subparagraph (a)(3)(B) of this Code section, the sum of \$100,000.00;

(iv) For a lighting retrofit project as described in division (a)(3)(C)(i) of this Code section, the sum of \$0.60 per square foot of the building with a maximum of \$100,000.00; and

(v) For an energy efficient building as described in division (a)(3)(C)(ii) of this Code section, the sum of the cost of energy efficient products installed during construction at \$1.80 per square foot of the building, with a maximum of \$100,000.00; and

(B) The following ceilings apply to clean energy property placed in service for single-family residential purposes, the lesser of 35 percent of the cost or:

(i) The sum of \$2,500.00 per dwelling unit applies for clean energy property related to solar energy equipment for domestic water heating as described in subparagraph (a)(3)(A) of this Code section which is certified for performance by the Solar Rating Certification Corporation, Florida Solar Energy Center, or by a comparable entity approved by the authority to have met the certification of Solar Rating Certification Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal collectors, Solar Rating Certification Corporation certification OG-300 or Florida Solar Energy Center-GP-5-80 for solar thermal residential systems, or both;

(ii) The sum of \$10,500.00 per dwelling unit applies for clean energy property related to solar energy equipment for solar electric (photovoltaic), other solar thermal electric applications, and active space heating as described in subparagraph (a)(3)(A) of this Code section, or to wind as described in subparagraph (a)(3)(B) of this Code section; and

(iii) The sum of \$2,000.00 per installation for Energy Star certified geothermal heat pump systems applies as described in subparagraph (a)(3)(B) of this Code section; and

(6)(A) Where the amount of any credits allowed by this Code section except for the credit under paragraph (2) of subsection (b) of this Code section exceeds the taxpayer's liability for such taxes in

a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the taxpayer.

(B) In no event shall the total amount of the tax credit under paragraph (2) of subsection (b) of this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against succeeding years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(c) The authority and department shall be authorized to adopt rules and regulations to provide for the administration of any tax credit provided by this Code section. Specifically, the authority and department shall create a mechanism to track and report the status and availability of credits for the public to review at a minimum on a quarterly basis.

(d) The authority and the department shall provide an annual report of:

(1) The number of taxpayers that claimed the credits allowed in this Code section;

(2) The cost of business property and clean energy property with respect to which credits were claimed;

(3) The type of clean energy property installed and the location;

(4) A determination of associated energy and economic benefits to the state; and

(5) The total amount of credits allowed. (Code 1981, § 48-7-29.14, enacted by Ga. L. 2008, p. 841, § 1/HB 670; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 949, § 1/HB 244; Ga. L. 2010, p. 1163, § 3/HB 1069; Ga. L. 2011, p. 297, § 3A/HB 346; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2011 amendment, effective May 11, 2011, substituted "December 31, 2014" for "December 31, 2012" in the middle of paragraph (b)(1); added the proviso at the

end of subparagraph (b)(1)(A); in paragraph (b)(3), deleted "and" at the end of subparagraph (b)(3)(D), substituted "\$5 million;" for "\$2.5 million." in subpara-

graph (b)(3)(E), and added subparagraphs (b)(3)(F) and (b)(3)(G); and in subparagraph (b)(4)(B), in the second sentence, deleted “to which” following “credit amount”, inserted “been”, substituted “the commissioner shall add such taxpayer to a priority waiting list of applications, prioritized by the date of the taxpayer’s first filed application” for “such taxpayer may reapply in the following taxable year for a tax credit for those same eligible costs, and in such event, that taxpayer shall have priority over other taxpayers for credit allocation in the year of such reapplication”, and added the last sentence. See editor’s note for applicability.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “State Forestry Commission” for “Georgia Forestry Commission” twice in paragraph (b)(2); and revised punctuation in subparagraphs (b)(5)(A) and (b)(5)(B).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 841, § 1, was redesignated as Code Section 48-7-29.14; Code Section

48-7-29.13, as enacted by Ga. L. 2008, p. 942, § 1, was redesignated as Code Section 48-7-29.15; and Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 1108, § 2, was redesignated as Code Section 48-7-29.16.

Pursuant to Code Section 28-9-5, in 2008, “subparagraph (a)(3)(B)” was substituted for “division (a)(3)(B)” in division (b)(5)(A)(iii).

Editor’s notes. — Ga. L. 2010, p. 1163, § 7/HB 1069, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2010.

Ga. L. 2011, p. 297, § 5(c)/HB 346, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall be applicable to all taxable years beginning on or after January 1, 2011.

Administrative rules and regulations. — Clean energy property and wood residuals tax credits, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, § 560-7-8-.48.

48-7-29.15. Tax credit for adoption of foster child.

(a) As used in this Code section, the term “qualified foster child” means a foster child who is less than 18 years of age and who is in a foster home or otherwise in the foster care system under the Division of Family and Children Services of the Department of Human Services.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 for the adoption of a qualified foster child. The amount of such credit shall be \$2,000.00 per qualified foster child per taxable year commencing with the year in which the adoption becomes final and ending in the year in which the adopted child attains the age of 18.

(c) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer’s income tax liability. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer’s succeeding years’ tax liability. No such tax credit shall be allowed the taxpayer against prior years’ tax liability.

(d) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-29.15, enacted by Ga. L. 2008, p. 942, § 1/HB 1159; Ga. L. 2009, p. 453, § 2-2/HB 228.)

Cross references. — Foster parents bill of rights, T. 49, C. 5, A. 14.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 841, § 1, was redesignated as Code Section 48-7-29.14; Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 942, § 1, was redesignated as Code Sec-

tion 48-7-29.15; and Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 1108, § 2, was redesignated as Code Section 48-7-29.16.

Editor's notes. — Ga. L. 2008, p. 942, § 2/HB 1159, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

48-7-29.16. Qualified education tax credit.

(a) As used in this Code section, the term:

(1) "Eligible student" shall have the same meaning as in paragraph (1) of Code Section 20-2A-1.

(2) "Qualified education expense" means the expenditure of funds by the taxpayer during the tax year for which a credit under this Code section is claimed and allowed to a student scholarship organization operating pursuant to Chapter 2A of Title 20 which are used for tuition and fees for a qualified school or program.

(3) "Qualified school or program" shall have the same meaning as in paragraph (2) of Code Section 20-2A-1.

(4) "Student scholarship organization" shall have the same meaning as in paragraph (3) of Code Section 20-2A-1.

(b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified education expenses as follows:

(1) In the case of a single individual or a head of household, the actual amount expended or \$1,000.00 per tax year, whichever is less;

(2) In the case of a married couple filing a joint return, the actual amount expended or \$2,500.00 per tax year, whichever is less; or

(3) Anything to the contrary contained in paragraph (1) or (2) of this subsection notwithstanding, in the case of an individual who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter "S" corporation, or a partner in a partnership, the amount expended or \$10,000.00 per tax year, whichever is less; provided, however, that tax credits pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such member of the limited liability company, shareholder of a Subchapter "S" corporation, or partner in a partnership.

(c) A corporation or other entity shall be allowed a credit against the tax imposed by this chapter for qualified education expenses in an

amount not to exceed the actual amount expended or 75 percent of the corporation's income tax liability, whichever is less.

(d)(1) The tax credit shall not be allowed if the taxpayer designates the taxpayer's qualified education expense for the direct benefit of any particular individual, whether or not such individual is a dependent of the taxpayer.

(2) In soliciting contributions, a student scholarship organization shall not represent, or direct a qualified private school to represent, that, in exchange for contributing to the student scholarship organization, a taxpayer shall receive a scholarship for the direct benefit of any particular individual, whether or not such individual is a dependent of the taxpayer. The status as a student scholarship organization shall be revoked for any such organization which violates this paragraph.

(e) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against the succeeding five years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(f)(1) In no event shall the aggregate amount of tax credits allowed under this Code section exceed \$58 million per tax year.

(2) The commissioner shall allow the tax credits on a first come, first served basis.

(3) For the purposes of paragraph (1) of this subsection, a student scholarship organization shall notify a potential donor of the requirements of this Code section. Before making a contribution to a student scholarship organization, the taxpayer shall electronically notify the department, in a manner specified by the department, of the total amount of contributions that the taxpayer intends to make to the student scholarship organization. The commissioner shall preapprove or deny the requested amount within 30 days after receiving the request from the taxpayer and shall provide notice to the taxpayer and the student scholarship organization of such preapproval or denial which shall not require any signed release or notarized approval by the taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall make the contribution to the student scholarship organization within 60 days after receiving notice from the department that the requested amount was preapproved. If the taxpayer does not comply with this paragraph, the commissioner shall not include this preapproved contribution amount when calculating the limit prescribed in paragraph (1) of this subsection. The department shall establish a web based donation approval process to implement this subsection.

(4) Preapproval of contributions by the commissioner shall be based solely on the availability of tax credits subject to the aggregate total limit established under paragraph (1) of this subsection. The department shall maintain an ongoing, current list on its website of the amount of tax credits available under this Code section.

(5) Notwithstanding any laws to the contrary, the department shall not take any adverse action against donors to student scholarship organizations if the commissioner preapproved a donation for a tax credit prior to the date the student scholarship organization is removed from the Department of Education list pursuant to Code Section 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with paragraph (3) of this subsection.

(g) In order for the taxpayer to claim the student scholarship organization tax credit under this Code section, a letter of confirmation of donation issued by the student scholarship organization to which the contribution was made shall be attached to the taxpayer's tax return. However, in the event the taxpayer files an electronic return, such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the data is transmitted to the department. In the event the taxpayer files an electronic return and such confirmation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such confirmation shall be maintained by the taxpayer and made available upon request by the commissioner. The letter of confirmation of donation shall contain the taxpayer's name, address, tax identification number, the amount of the contribution, the date of the contribution, and the amount of the credit.

(h)(1) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code.

(2) The amount of any scholarship received by an eligible student or eligible pre-kindergarten student shall be excluded from taxable net income for Georgia income tax purposes.

(i) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the tax provisions of this Code section. (Code 1981, § 48-7-29.16, enacted by Ga. L. 2008, p. 1108, § 2/HB 1133; Ga. L. 2009, p. 816, § 6/HB 485; Ga. L. 2011, p. 529, § 2/HB 325; Ga. L. 2013, p. 1061, § 33D/HB 283.)

The 2011 amendment, effective July 1, 2011, inserted "or other entity" near the beginning of subsection (c); added the proviso in paragraph (f)(1); in paragraph

(f)(3), added “and shall provide written notice to the taxpayer and the student scholarship organization of such preapproval or denial which shall not require any signed release or notarized approval by the taxpayer” at the end of the third sentence, substituted “within 60 days” for “within 30 days” in the fourth sentence, and added the sixth sentence; added the second sentence of paragraph (f)(4); and added paragraph (f)(5). See editor’s note for applicability.

The 2013 amendment, effective May 7, 2013, in subsection (a), added paragraph (a)(1) and redesignated former paragraphs (a)(1) through (a)(3) as present paragraphs (a)(2) through (a)(4), respectively; in subsection (b), deleted “or” at the end of paragraph (b)(1), added “; or” at the end of paragraph (b)(2), and added paragraph (b)(3); designated the existing provisions of subsection (d) as paragraph (d)(1); and, in paragraph (d)(1), inserted “particular individual, whether or not such individual is a”; added paragraph (d)(2); substituted the present provisions of paragraph (f)(1) for the former provisions, which read: “In no event shall the aggregate amount of tax credits allowed under this Code section exceed \$50 million per tax year; provided, however, that this maximum amount shall be adjusted annually until January 1, 2018, which adjustment may be based on the most recent annual percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average All Items Index, published by the Bureau of Labor Statistics of the United States Department of Labor, as determined by the department.”; and, in paragraph (f)(3), in the second sentence, inserted “electronically”, and inserted “, in a manner specified by the department,” in the third sentence, de-

leted “written” preceding “notice”, and, in the last sentence, substituted “web based” for “web-based”. See editor’s note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 841, § 1, was redesignated as Code Section 48-7-29.14; Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 942, § 1, was redesignated as Code Section 48-7-29.15; and Code Section 48-7-29.13, as enacted by Ga. L. 2008, p. 1108, § 2, was redesignated as Code Section 48-7-29.16.

Editor’s notes. — Ga. L. 2008, p. 1108, § 3/HB 1133, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2009, p. 816, § 1/HB 485, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Improved Taxpayer Customer Service Act of 2009.’”

Ga. L. 2009, p. 816, § 8(b)/HB 485, not codified by the General Assembly, provides, in part, that the amendment of subsection (g) by this Act shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2011, p. 529, § 3/HB 325, not codified by the General Assembly, provides that the 2011 amendment shall be applicable to all taxable years beginning on or after January 1, 2011.

Ga. L. 2013, p. 1061, § 33E/HB 283, not codified by the General Assembly, provides, in part, that this Code section shall apply to all taxable years beginning on or after January 1, 2013.

U.S. Code. — Section 501(c)(3) of the Internal Revenue Code, referred to in paragraph (h)(1), is codified as 26 U.S.C. § 501(c)(3).

48-7-29.17. Tax credit for purchase of one eligible single-family residence.

(a) As used in this Code section, the term “eligible single-family residence” means:

- (1) A single-family structure, including a condominium unit as defined in Code Section 44-3-71 that is occupied for residential purposes by a single family, that is a new residence, a residence

occupied at the time of sale, or a previously occupied residence that was for sale prior to May 11, 2009, and is still for sale after May 11, 2009; or

(2) A single-family structure, including a condominium unit as defined in Code Section 44-3-71 that is occupied for residential purposes by a single family, that is:

(A) An owner occupied residence with respect to which the owner's acquisition indebtedness, as defined in Section 163(h)(3)(B) of the Internal Revenue Code, determined without regard to clause (ii) thereof, was in default on or before March 1, 2009; or

(B) A residence with respect to which a foreclosure event has taken place and which is owned by the mortgagor or the mortgagor's agent.

(b) A taxpayer shall be allowed a credit against the tax imposed by Code Section 48-7-20 for the purchase of one eligible single-family residence made during the six-month period commencing on June 1, 2009, and ending on November 30, 2009. The amount of such credit shall be either 1.2 percent of the purchase price of such eligible single-family residence or \$1,800.00, whichever is less.

(c) The amount of the tax credit under subsection (b) of this Code section which may be claimed and allowed in a single tax year shall not exceed the taxpayer's income tax liability or one-third of the total amount of the credit allowed under subsection (b) of this Code section, whichever is less. Any excess or unused tax credit amount shall be carried forward to apply to the taxpayer's succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(d)(1) A taxpayer shall submit to the commissioner a bona fide listing agreement with a real estate agent or broker licensed in this state, documentation that the eligible single-family residence was for sale directly by the owner without a real estate agent or broker, or other appropriate documentation deemed sufficient by the commissioner to validate the eligibility of the single-family residence for purposes of the tax credit under this Code section.

(2) In the event the taxpayer files an electronic return, the documentation required under paragraph (1) of this subsection shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the data is transmitted to the department. In the event the taxpayer files an electronic return and such documentation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such documentation

shall be maintained by the taxpayer and made available upon request of the commissioner.

(e) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-29.17, enacted by Ga. L. 2009, p. 945, § 1/HB 261.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, in paragraph (a)(1), “to May 11, 2009, and is still for sale after May 11, 2009; or” was substituted for “to the effective date of this Code section and is still for sale after the effective date of this Code section; or”; at the end of the first sentence of subsection

(b), “commencing on June 1, 2009, and ending on November 30, 2009” was substituted for “commencing on the first day of the month following the effective date of this Code section and ending on the last day of the sixth complete month thereafter”; and a misspelling of “eligibility” was corrected in paragraph (d)(1).

48-7-30. Taxation of nonresident’s entire net income derived from activities within state; separate accounting possible; applicability; allowed deductions; applicability of provisions for corporations to nonresidents.

(a) The tax imposed by this chapter shall apply to the entire net income of a taxable nonresident derived from employment, trade, business, professional, or other activity for financial gain or profit performed or carried on within this state including, but not limited to, the rental of real or personal property located within this state or for use within this state, the sale, exchange, or other disposition of tangible or intangible property having a situs in this state, the receipt of proceeds of any lottery prize awarded by the Georgia Lottery Corporation, and withdrawals of contributions to a savings trust account under Article 11 of Chapter 3 of Title 20 which are required to be included in taxable net income as provided in subparagraph (b)(10)(C) of Code Section 48-7-27.

(b) A taxable nonresident whose income is derived from employment, trade, business, professional, or other activity performed or carried on within and outside this state shall be taxed only upon the income derived from carrying on the activity within this state. The amount of taxable income may be determined by a separate accounting of the income if the commissioner is satisfied that the separate accounting reflects correctly the income fairly attributable to this state. Otherwise, the amount of taxable income shall be determined in the manner prescribed by this chapter for the allocation and apportionment of income of corporations engaged in business within and outside this state.

(c) Except as otherwise provided by law, all provisions of this chapter with respect to the definitions, determination, and computation of

taxable net income of residents of this state and with respect to the assessment, levy, and collection of the tax imposed by this chapter on the net income of residents of this state shall apply equally to the taxation of the net income of taxable nonresidents.

(d)(1) A taxable nonresident shall be allowed to deduct allowable expenses, interest, taxes, losses, bad debts, depreciation, and similar business expenses when the income of the taxable nonresident is derived from:

(A) Employment, trade, business, professional, or other activity performed or carried on:

(i) Entirely within this state; or

(ii) Within and outside this state when the nonresident is permitted by the commissioner to use separate accounting;

(B) The rental of real or personal property located within this state or for use within this state;

(C) The sale, exchange, or other disposition of tangible or intangible property having a situs in this state.

(2) Expenses allowable to a taxable nonresident as provided in paragraph (1) of this subsection shall be allowable only to the extent that the expenses are attributable to the production of income allocable to and taxable by this state. As to allowable deductions essentially personal in nature, such as contributions to charitable organizations, alimony, medical expenses, the optional standard deduction, personal exemptions, and credits for dependents, the taxable nonresident shall be allowed deductions for such deductions essentially personal in nature in the ratio that the gross income allocated to this state bears to the total gross income of the taxable nonresident computed as if the taxable nonresident were a resident of this state. The commissioner may accept total federal gross income as the equivalent of total Georgia gross income for purposes of this allocation.

(e) A taxable nonresident whose income is derived from the activities specified in subsection (d) of this Code section performed or carried on within and outside this state and who is required to allocate and apportion his income in the manner of corporations engaged in business within and outside this state shall compute his net taxable income as if he were a resident of this state. The net taxable income so computed shall be apportioned in the manner of corporations engaged in business within and outside this state. (Ga. L. 1931, Ex. Sess., p. 24, § 15; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3112; Ga. L. 1957, p. 397, § 3; Code 1933, § 91A-3610, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p.

191, § 2; Ga. L. 1994, p. 597, § 3; Ga. L. 2002, p. 372, § 4; Ga. L. 2008, p. 159, § 9/HB 1014.)

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that §§ 1-4, 6, and 8-14 of this Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2008, p. 159, § 10/HB 1014, not codified by the General Assembly, provides, in part, that the 2008 amendment shall be applicable to all taxable years beginning on or after January 1, 2008.

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

For comment on *Forrester v. Culpepper*, 194 Ga. 744, 22 S.E.2d 595 (1942), see 6 Ga. B.J. 155 (1943).

JUDICIAL DECISIONS

Legislative intent as to income earned outside state before becoming resident. — Former Code 1933, §§ 92-3002, 92-3101, and 92-3112 (see O.C.G.A. §§ 48-7-1, 48-7-20 and 48-7-30) when construed together, authorize if the statutes do not compel the interpretation that the legislature did not intend to im-

pose a tax upon such portion of the income of a resident as was derived by the resident from sources without the state before the date on which the individual became a resident of this state. *Forrester v. Culpepper*, 194 Ga. 744, 22 S.E.2d 595 (1942); commented on in 6 Ga. B.J. 155 (1943).

OPINIONS OF THE ATTORNEY GENERAL

Scope of term "business." — Word "business" as used in this section is not meant to include sole proprietorships or partnerships whose entire income is from professional or personal services. 1954-56 Op. Att'y Gen. p. 760.

When income received by nonresident from certificate of deposit issued by Georgia bank taxable. — Income received by a nonresident from a

certificate of deposit issued by a Georgia bank would not be subject to income tax in this state unless the certificate of deposit had been acquired as income from property otherwise held in this state or as the result of regular conduct by a nonresident of a business dealing in such intangibles within the State of Georgia. 1967 Op. Att'y Gen. No. 67-250.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 378, 382.

C.J.S. — 85 C.J.S., Taxation, §§ 1826 et seq., 1836 et seq., 1854 et seq., 1882, 1883, 1901 et seq.

ALR. — “Business situs” for purposes of property taxation of intangibles in state other than domicile of owner, 76 ALR 806; 143 ALR 361.

Power of state to extend its taxing power by its definition of residence or its declared policy of domesticating foreign corporations, 100 ALR 1216.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 ALR 943.

48-7-31. Taxation of corporations; allocation and apportionment of income; formula for apportionment.

(a) The tax imposed by this chapter shall apply to the entire net income, as defined in this article, received by every foreign or domestic corporation owning property within this state, doing business within this state, or deriving income from sources within this state to the extent permitted by the United States Constitution. A corporation shall be deemed to be doing business within this state if it engages within this state in any activities or transactions for the purpose of financial profit or gain whether or not:

(1) The corporation qualifies to do business in this state;

(2) The corporation maintains an office or place of doing business within this state; or

(3) Any such activity or transaction is connected with interstate or foreign commerce.

(b)(1) If the entire business income of the corporation is derived from property owned or business done in this state, the tax shall be imposed on the entire business income.

(2) If the business income of the corporation is derived in part from property owned or business done in this state and in part from property owned or business done outside this state, the tax shall be imposed only on that portion of the business income which is reasonably attributable to the property owned and business done within this state, such portion to be determined as provided in subsections (c) and (d) of this Code section.

(c)(1) Interest received on bonds held for investment and income received from other intangible property held for investment are not subject to apportionment. All expenses connected with such investment income shall be applied against the investment income. The net investment income from intangible property shall be allocated to this state if the situs of the corporation is in this state or if the intangible

property was acquired as income from property held in this state or as a result of business done in this state.

(2) Rentals received from real estate held purely for investment purposes and not used in the operation of any business are not subject to apportionment. All expenses connected with such investment income shall be applied against the investment income. The net investment income from tangible property located in this state shall be allocated to this state.

(3) Gains from the sale of tangible or intangible property not held, owned, or used in connection with the trade or business of the corporation nor held for sale in the regular course of business shall be allocated to this state if the property sold is real or tangible personal property situated in this state or intangible property having an actual situs or a business situs within this state. Otherwise, the gains shall not be allocated to this state.

(d) Net income of the classes described in subsection (c) of this Code section having been separately allocated and deducted, the remainder of the net business income shall be apportioned as follows:

(1) Where the net business income of the corporation is derived principally from the manufacture, production, or sale of tangible personal property, the portion of net income therefrom attributable to property owned or business done within this state shall be taken to be the portion arrived at by application of the following formula:

(A) Gross receipts factor.

(i) The gross receipts factor is a fraction, the numerator of which is the total gross receipts from business done within this state during the tax period and the denominator of which is the total gross receipts from business done everywhere during the tax period. For the purposes of this subparagraph, receipts shall be deemed to have been derived from business done within this state only if the receipts are received from products shipped to customers in this state, or from products delivered within this state to customers. In determining the gross receipts within this state, receipts from sales negotiated or effected through offices of the taxpayer outside this state and delivered from storage in this state to customers outside this state shall be excluded;

(ii) Where a taxpayer's gross receipts are also derived from activities described in paragraph (2) of this subsection, gross receipts shall also include the gross receipts from the activities described in paragraph (2) of this subsection and shall be attributed to Georgia based upon division (2)(A)(i) of this subsection;

(B) Apportionment formula. The net income of the corporation shall be apportioned to this state according to the gross receipts factor pursuant to subparagraph (A) of this paragraph;

(2) Except as otherwise provided in paragraph (2.1) or (2.2) of this subsection, where the net business income is derived principally from business other than the manufacture, production, or sale of tangible personal property, the net business income of the corporation shall be determined by applying the following formula:

(A) Gross receipts factor.

(i) The gross receipts factor is a fraction, the numerator of which is the total gross receipts from business done within this state during the tax period and the denominator of which is the total gross receipts from business done everywhere during the tax period. For purposes of this subparagraph, the term "gross receipts" means all gross receipts received from activities which constitute the taxpayer's regular trade or business. Gross receipts are in this state if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace;

(ii) Where a taxpayer's gross receipts are also derived from activities described in paragraph (1) of this subsection, gross receipts shall also include the gross receipts from the activities described in paragraph (1) of this subsection and shall be attributed to Georgia based upon division (1)(A)(i) of this subsection;

(B) Apportionment formula. The net income of the corporation shall be apportioned to this state according to the gross receipts factor pursuant to subparagraph (A) of this paragraph;

(C) If the allocation and apportionment provisions provided for in this paragraph do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition the commissioner for, or the commissioner may by regulation require, with respect to all or any part of the taxpayer's business activity, if reasonable:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity within this state; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

The denial of a petition under this subparagraph shall be appealable pursuant to Code Section 48-2-59. Such an appeal shall be filed within 30 days of the date of the commissioner's notice of denial;

(2.1)(A) Except as otherwise provided in this paragraph, all terms used in this paragraph shall have the same meaning as such terms are defined in 49 U.S.C. Section 1301 and the United States Department of Transportation's Uniform System of Accounts and Reports for Large Certificated Air Carriers, 14 C.F.R. Part 241, as now or hereafter amended.

(B) Where the net business income of the corporation is derived principally from transporting passengers or cargo in revenue flight, the portion of the net income therefrom attributable to property owned or business done within this state shall be taken to be the portion arrived at by application of the following three-factor formula:

(i) Revenue air miles factor. The revenue air miles factor is a fraction, the numerator of which shall be equal to the total, for each flight stage which originates or terminates in this state, of revenue passenger miles by aircraft type flown in this state and revenue cargo ton miles by aircraft type flown in this state and the denominator of which shall be equal to the total, for all flight stages flown everywhere, of total revenue passenger miles by aircraft type and total revenue cargo ton miles by aircraft type;

(ii) Tons handled factor. The tons handled factor is a fraction, the numerator of which shall be equal to the total of revenue passenger tons by aircraft type handled in this state and revenue cargo tons by aircraft type handled in this state and the denominator of which shall be equal to the total of revenue passenger tons by aircraft type flown everywhere and revenue cargo tons by aircraft type flown everywhere. For purposes of this division, the term "handled" means the product of 60 percent multiplied by the revenue passenger tons flown on each flight stage which originates in this state or 60 percent multiplied by the revenue cargo tons flown on each flight stage which originates in this state;

(iii) Originating revenue factor. The originating revenue factor is a fraction, the numerator of which shall be equal to the total of passenger and cargo revenue by aircraft type which is attributable to this state and the denominator of which shall be the total of passenger and cargo revenue by aircraft type everywhere. For purposes of this division, passenger or cargo revenue which is attributable to this state shall be equal to the product of

passenger or cargo revenue everywhere by aircraft type multiplied by the ratio of revenue passenger miles or revenue cargo ton miles in this state to total revenue passenger miles everywhere or total revenue cargo ton miles everywhere for each aircraft type as separately determined in division (i) of this subparagraph. If records of total passenger revenue everywhere by aircraft type or total cargo revenue everywhere by aircraft type are not maintained, then for purposes of this division, total passenger revenue everywhere for all aircraft types or total cargo revenue everywhere for all aircraft types shall be allocated to each aircraft type based on the ratio of total revenue passenger miles everywhere for that aircraft type to all aircraft types or total revenue cargo ton miles everywhere for that aircraft type to all aircraft types;

(iv) The revenue air miles factor, the tons handled factor, and the originating revenue factor shall be separately determined and an apportionment fraction shall be calculated using the following formula:

(I) The revenue air miles factor shall represent 25 percent of the fraction;

(II) The tons handled factor shall represent 25 percent of the fraction; and

(III) The originating revenue factor shall represent 50 percent of the fraction.

The net income of the corporation shall be apportioned to this state according to such average fraction;

(2.2)(A) As used in this paragraph, the term:

(i) "Credit card data processing and related services" shall include, but not be limited to, the provision of infrastructure services for bank credit card and private label card issuers, such as new account application processing, international and domestic clearing, statement preparation, point-of-sale authorization processing, card embossing, and other related processing services for managing cardholder accounts.

(ii) "Customer" means the banks and institutions to whom credit card data processing and related services are provided.

(iii) "Gross receipts factor" means a fraction, the numerator of which is the total gross receipts from the taxpayer's customers during the tax period, if the principal office of the customer's credit card operation is in this state or if the principal office of the taxpayer's customer is in this state, and the denominator of

which is the total gross receipts from all of the taxpayer's customers during the tax period.

(B) Where more than 60 percent of the total gross receipts of a corporation are derived from the provision of credit card data processing and related services to banks and other institutions, the portion of the net income attributable to business done in this state shall be determined by multiplying the corporation's net income by the gross receipts factor in division (iii) of subparagraph (A) of this paragraph;

(3) For the purposes of this subsection, the term "sale" shall include, but not be limited to, an exchange, and the term "manufacture" shall include, but not be limited to, the extraction and recovery of natural resources and all processes of fabricating and curing.

(e) The net income of a domestic or foreign corporation which is a subsidiary of another corporation or which is closely affiliated with another corporation by stock ownership shall be determined by eliminating all payments to the parent corporation or affiliated corporation in excess of fair value and by including fair compensation to the domestic business corporation for its commodities sold to or services performed for the parent corporation or affiliated corporation. For the purposes of determining net income as provided in this subsection, the commissioner may equitably determine the net income by reasonable rules of apportionment of the combined income of the subsidiary, its parent, and affiliates, or any combination of the subsidiary, its parent, and any one or more of its affiliates. (Ga. L. 1931, Ex. Sess., p. 24, § 15; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3113; Ga. L. 1935, p. 121, § 4; Ga. L. 1937, p. 109, § 9; Ga. L. 1941, p. 210, § 5; Ga. L. 1950, p. 299, § 1; Ga. L. 1962, p. 455, § 1; Ga. L. 1969, p. 114, §§ 3, 4; Ga. L. 1974, p. 406, § 1; Code 1933, § 91A-3611, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 69; Ga. L. 1987, p. 191, § 2; Ga. L. 1995, p. 714, §§ 1, 2; Ga. L. 1996, p. 181, §§ 7, 8; Ga. L. 1996, p. 220, § 1; Ga. L. 1997, p. 459, §§ 1, 2; Ga. L. 1998, p. 6, § 1; Ga. L. 2001, p. 984, § 5; Ga. L. 2002, p. 415, § 48; Ga. L. 2005, p. 30, §§ 4-6/HB 191; Ga. L. 2005, p. 159, § 15/HB 488; Ga. L. 2012, p. 318, § 10/HB 100.)

The 2012 amendment, effective January 1, 2013, substituted "Code Section 48-2-59. Such an appeal shall be filed within 30 days of the date of the commissioner's notice of denial" for "either Code Section 48-2-59 or 50-13-12" in the ending undesignated paragraph of subparagraph (d)(2)(C).

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11,

1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of

1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1995, p. 714, § 4, not codified by the General Assembly, provides that the 1995 amendment shall be applicable to all taxable years beginning on or after January 1, 1995.

Ga. L. 1996, p. 181, § 10, not codified by the General Assembly, provides for a study and report by the state revenue commissioner regarding the effect of the Act on revenue received by the state, counties, and cities in 1997 and 1998 from the tax imposed by Article 4 of Chapter 6 of Title 48 of the Code.

Ga. L. 1996, p. 181, § 11, not codified by the General Assembly, provides that the 1996 amendment shall be applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 1996, p. 220, § 11, not codified by the General Assembly, provides that the 1996 amendment shall be applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 1997, p. 459, § 3, not codified by the General Assembly, provides that the 1997 amendment shall be applicable to all taxable years beginning on or after January 1, 1997.

Ga. L. 1998, p. 6, § 2, not codified by the General Assembly, provides that the 1998 amendment shall be applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 2001, p. 984, § 20, not codified by the General Assembly, provides that the 2001 amendment shall be applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2005, p. 30, § 7(d)/HB 191, not codified by the General Assembly, provides that the 2005 amendment to para-

graphs (d)(1) and (d)(2) shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Administrative rules and regulations. — Corporations: Allocation and appointment of income, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, § 560-7-7-.03.

Law reviews. — For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973). For article, "Primary Tax Incentives for Industrial Investment in the Southeastern United States," see 25 Emory L.J. 789 (1976).

For note discussing Georgia corporate income tax in light of commerce clause immunity, see 10 Ga. B.J. 172 (1947). For note on the 1995 amendment of this Code section, see 12 Ga. St. U.L. Rev. 347 (1995). For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 294 (2001).

For comment on *Redwine v. Schenley Indus., Inc.*, 210 Ga. 769, 83 S.E.2d 16 (1954), see 17 Ga. B.J. 261 (1954). For comment, "Doing Business for Purposes of State Taxation of Foreign Corporations," focusing on *Minnesota v. Northwestern States Portland Cement Co.*, CCH State Tax Reports 16-001 (Hennepin County Dist. Court, October, 1955), see 5 J. Pub. L. 263 (1956). For comment on *Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421 (1959), upholding constitutionality of state net income tax levied on revenues of foreign corporation derived from interstate commerce where tax is "fairly apportioned," see 22 Ga. B.J. 107 (1959). For comment on *Hawes v. William L. Bonnell Co.*, 116 Ga. App. 184, 156 S.E.2d 536 (1967), see 19 Mercer L. Rev. 464 (1968).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATIONS
DOING BUSINESS
THREE-FACTOR FORMULA
GROSS RECEIPTS FACTOR

NET INCOME OF SUBSIDIARIES AND AFFILIATES

General Considerations

History of this section through Ga. L. 1950, p. 299. *State v. Coca Cola Bottling Co.*, 212 Ga. 630, 94 S.E.2d 708 (1956).

Legislative intent. — By this section, the General Assembly clearly and plainly showed the legislature's intention to tax the activities or transactions which every corporation carries on within this state for the purpose of financial profit or gain. *Owens-Illinois Glass Co. v. Oxford*, 216 Ga. 316, 116 S.E.2d 293 (1960).

Purpose of section. — Evident purpose of this section is to require the taxpayer to pay to this state income tax on that portion of the taxpayer's business which is fairly attributable to its activities in this state. *Twentieth Century-Fox Film Corp. v. Phillips*, 76 Ga. App. 825, 47 S.E.2d 183 (1948).

Obvious purpose of this section as a whole is to provide some of the rules for determining corporate net income within the state. *Blackmon v. Campbell Sales Co.*, 125 Ga. App. 859, 189 S.E.2d 474 (1972).

Section fixes a legislative definition of what constitutes basis for assessing income taxes against corporations, foreign or domestic, which engage in any activities or transactions in this state for the purpose of financial profit or gain. *Owens-Illinois Glass Co. v. Oxford*, 216 Ga. 316, 116 S.E.2d 293 (1960).

Alternative means of computing Georgia-derived income. — Under former Code 1933, §§ 92-3114 and 92-3115 (see O.C.G.A. §§ 48-7-34 and 48-7-35), that part of the net income of a corporation engaged in the business of manufacturing or selling tangible personal property in this state, and elsewhere, which should be allocated and apportioned to this state, may be determined. This is especially true when such a corporation in the corporation's regular business activities does not have all of the factors of the three factor formula. *State v. Coca Cola Bottling Co.*, 212 Ga. 630, 94 S.E.2d 708 (1956).

Former Code 1933, §§ 92-3114 and

92-3115 (see O.C.G.A. §§ 48-7-3 and 48-7-35) conferred upon nonresidents and corporations the right to seek alternative methods of determining their Georgia-derived income when such methods would more accurately reflect that income. *Henry C. Beck Co. v. Blackmon*, 131 Ga. App. 634, 206 S.E.2d 842 (1974), *aff'd*, 233 Ga. 412, 211 S.E.2d 711 (1975).

Purpose of apportionment provisions. — Common sense meaning of this section as to apportioning of business income is that a corporation carrying on an active interstate business in this state and one or more other states is entitled to apportion its total taxable income between or among those states. Its liability to this state is on the amount apportioned to Georgia. *Blackmon v. Habersham Mills, Inc.*, 233 Ga. 501, 212 S.E.2d 337 (1975).

Amount of business in this state historically is primary factor in allocating net income. — Throughout the history of this section, one of the primary factors in determining the proportion of the net income properly to be allocated to this state has been the amount of business within the state. *Twentieth Century-Fox Film Corp. v. Phillips*, 76 Ga. App. 825, 47 S.E.2d 183 (1948).

When interstate operations of foreign corporation may be taxed. — Net income from the interstate operations of a foreign corporation may be subjected to state taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing state forming a sufficient nexus to support the same. *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421 (1959).

Jurisdiction in other states for tax purposes immaterial to liability in this state. — Whether a corporation is subject to the taxing jurisdiction of other states is immaterial. If a domestic or foreign corporation has an apportioned tax liability in this state, the remainder of the corporation's apportioned tax liability being in other states, whether those other states do or do not levy a state income tax is immaterial. *Blackmon v. Habersham Mills, Inc.*, 233 Ga. 501, 212 S.E.2d 337 (1975).

Apportionment provisions inapplicable when entire net income derived from doing business in this state. —

When corporation's entire net income is derived from doing business in this state, the remainder of this section, relating to an apportionment of income when it is derived only in part from property owned or business done within this state and in part from property owned or business done elsewhere, is wholly inapplicable. *State v. Coca-Cola Bottling Co.*, 214 Ga. 316, 104 S.E.2d 574 (1958).

Apportionment under paragraph (d)(3) of section. — When subsection (5) of former Code 1933, § 92-3113 (see O.C.G.A. § 48-7-31) was applicable, equitable apportionment was mandatory unless the taxpayer made application for other treatment pursuant to former Code 1933, §§ 92-3114 and 92-3115 (see O.C.G.A. §§ 48-7-34 and 48-7-35) and such application was granted by the commissioner. *Blackmon v. Henry C. Beck Co.*, 233 Ga. 412, 211 S.E.2d 711 (1975).

Under former paragraph (d)(3) of O.C.G.A. § 48-7-31, a corporation engaged in a unitary-service related business with other corporations could use a unitary method of apportioning income since the provision, prior to the 1995 amendment, did not require a specific method of apportionment. *Collins v. AT & T Co.*, 219 Ga. App. 196, 464 S.E.2d 642 (1995).

Separate business rule inapplicable under paragraph (d)(3) of section. —

"Separate business" rule cannot be supported by subsection (5) of this section, which stated that the net income shall be equitably apportioned within and outside the state under rules and regulations of the commissioner, in the ratio that the business within the state was to the total business of the corporation. *Blackmon v. Henry C. Beck Co.*, 233 Ga. 412, 211 S.E.2d 711 (1975).

Failure of commissioner to apportion income derived both within and outside state is abuse of discretion. —

If the net income of a corporation is derived from the performance of the corporation's business operations both within and outside this state, it is an abuse of the commissioner's discretion to tax that cor-

poration on a separate accounting basis, when the General Assembly has required that such income be equitably apportioned. *Henry C. Beck Co. v. Blackmon*, 131 Ga. App. 634, 206 S.E.2d 842 (1974), *aff'd*, 233 Ga. 412, 211 S.E.2d 711 (1975).

Tax liability when principal office and place of business located in state. —

When orders for taxpayer's product come to it unsolicited and when taxpayer's principal office and place of business is in this state, the taxpayer is liable to this state for income tax upon the net income derived from its entire business operations. Its business is done in this state and the destination or origin of its shipment in no wise alters this fact. *State v. Coca-Cola Bottling Co.*, 214 Ga. 316, 104 S.E.2d 574 (1958).

Sale of whiskey. — It is illogical and unreasonable to contend that the sale of whiskey in this state by an unlicensed nonresident, upon orders taken in this state and approved by the state revenue commissioner in conformity with regulations, is doing business in this state and is subject to income tax on the income arising therefrom. *Redwine v. Schenley Indus., Inc.*, 210 Ga. 769, 83 S.E.2d 16; commented on in 17 Ga. B.J. 261 (1954).

Cited in *Graham v. Hanna*, 297 Ga. App. 542, 677 S.E.2d 686 (2009).

Doing Business

Term "doing business" comports with due process requirements. —

Term "doing business" within former Code 1933, §§ 92-2401 and 92-3113, which means any activity or transactions for the purpose of financial profit or gain, did not violate the due process requirement of either the Fourteenth Amendment or Ga. Const. 1976, Art. I, Sec. I, Para. I (see Ga. Const. 1983, Art. I, Sec. I, Para. I). *Chatanooga Glass Co. v. Strickland*, 244 Ga. 603, 261 S.E.2d 599 (1979).

No prohibition against tax benefit or exemption for domestic corporation doing business outside state. —

Regardless of constitutional limitations on the state's power to tax foreign corporations, it is not prohibited from granting a tax benefit or exemption to a domestic corporation doing business outside the state. *Blackmon v. Habersham Mills, Inc.*,

Doing Business (Cont'd)

131 Ga. App. 59, 205 S.E.2d 21 (1974), aff'd, 233 Ga. 501, 212 S.E.2d 337 (1975).

Constitutionality of tax on income from unsolicited orders received from outside state. — Income derived by a corporation from unsolicited orders received by the corporation from outside the state cannot, under the Fourteenth Amendment and the commerce clause of the United States Constitution, be taxed elsewhere than in the state. *State v. Coca-Cola Bottling Co.*, 214 Ga. 316, 104 S.E.2d 574 (1958).

Former "closed transaction" test replaced by "activities or transactions" test. — Georgia Laws 1950, p. 299, had the legal effect of shifting the operation of this section from the "closed transaction" test, which the courts of this state had previously applied to it, to the "activities or transactions" test, which Ga. L. 1950, p. 299 established as the criterion to be used thereafter in determining an income tax liability to this state of a corporation, foreign or domestic, which engages in any activities or transactions in this state for the purpose of financial profit or gain. *Owens-Illinois Glass Co. v. Oxford*, 216 Ga. 316, 116 S.E.2d 293 (1960).

"Doing business" identifies who is liable, not extent of liability. — First paragraph of this section defines who was liable for the tax. The references to "doing business" do not relate in any manner to the amount of the tax liability. *Blackmon v. Habersham Mills, Inc.*, 233 Ga. 501, 212 S.E.2d 337 (1975).

"Doing business" means any activity or transaction for the purpose of financial profit or gain. *Chattanooga Glass Co. v. Strickland*, 244 Ga. 603, 261 S.E.2d 599 (1979).

"Doing business" encompasses substantial activity on behalf of the corporation. — Courts have interpreted the words "doing business" when applied to a foreign corporation to encompass a substantial activity on the corporation's own behalf in this state. Likewise, the same test is applied as to a domestic corporation seeking to apportion the corporation's income for "doing business" outside the state. *Hawes v. William L. Bonnell Co.*,

116 Ga. App. 184, 156 S.E.2d 536 (1967); for comment see 19 Mercer L. Rev. 464 (1968).

Same activity not necessarily likewise doing business both within and outside state. — This section is designed to provide a broad basis for taxation of foreign corporations and to offer domestic corporations doing business outside the state commensurate tax benefits. However, this section does not provide that whatsoever would be deemed to constitute doing business within the state shall similarly constitute doing business outside the state. It merely provides a definition of "doing business". *Hawes v. William L. Bonnell Co.*, 116 Ga. App. 184, 156 S.E.2d 536 (1967); for comment see 19 Mercer L. Rev. 464 (1968).

What activities insufficient to constitute "doing business". — Following activities have been found insufficient to constitute "doing business": (1) customers and delivery of merchandise; (2) salaried salesman; and (3) sales arrangements and selling contracts with various companies. *Hawes v. William L. Bonnell Co.*, 116 Ga. App. 184, 156 S.E.2d 536 (1967); for comment see 19 Mercer L. Rev. 464 (1968).

What activity of foreign corporation constitutes doing business. — In order to incur tax liability under statutes imposing taxes on persons doing business in a state, a foreign corporation must transact some substantial part of its ordinary business, and it must be continuous in character as distinguished from a mere casual or occasional transaction. *Hawes v. William L. Bonnell Co.*, 116 Ga. App. 184, 156 S.E.2d 536 (1967); for comment see 19 Mercer L. Rev. 464 (1968).

Three-Factor Formula

Gross receipts factor and apportionment formula comport with due process. — Gross receipts factor, when taken in connection with the two other factors of the three factor formula and subsection (4)(d) of this section did not violate the due process clause of either the federal or state Constitutions. *United States Steel Corp. v. Undercofler*, 220 Ga. 553, 140 S.E.2d 269 (1965).

Discussion of the history of the three factor formula. — See Oxford v.

Nehi Corp., 215 Ga. 74, 109 S.E.2d 329 (1959).

Object of apportionment is to fairly allocate the net income of the taxpayer, which is accomplished by the selection of factors which are causally related to the production of the income. *State v. Coca Cola Bottling Co.*, 212 Ga. 630, 94 S.E.2d 708 (1956).

Fair and proper allocation is obtained only when all three factors actually exist and are used by the taxpayer in making an apportionment of the taxpayer's net income. *State v. Coca Cola Bottling Co.*, 212 Ga. 630, 94 S.E.2d 708 (1956).

Use of fewer than all three factors in computations no longer allowed. — In determining the amount of the taxpayer's net income which should be allocated and apportioned to this state, former Code 1933, § 92-3113 (see O.C.G.A. § 48-7-31), unlike former Code 1933, § 92-3113 as it existed prior to Ga. L. 1950, p. 299, did not permit the use of two or one of the factors making up the formula, but expressly declared that all the factors must be used by the taxpayer in determining the amount of the taxpayer's net income which should be allocated and apportioned to this state. *State v. Coca Cola Bottling Co.*, 212 Ga. 630, 94 S.E.2d 708 (1956).

When out-of-state sales taxable as Georgia income. — Out-of-state sales of a taxpayer who is engaged in the sale of tangible goods both within and outside the state are taxable as Georgia income when the out-of-state deliveries are made under a contract that title to the goods passes to the purchaser at destination, and when the three factor formula is applicable. *Oxford v. Nehi Corp.*, 98 Ga. App. 779, 106 S.E.2d 857 (1958), *aff'd*, 215 Ga. App. 74, 109 S.E.2d 329 (1959).

When a corporation derives the corporation's income from business done both within and without the state, Georgia taxes only that income which is "reasonably attributable to the property owned and business done within this state," pursuant to a three-part statutory formula. The three factors which are considered are the corporation's property, payroll, and gross receipts. *Strickland v. Patcraft Mills, Inc.*, 251 Ga. 43, 302 S.E.2d 544 (1983).

Gross Receipts Factor

Gross receipts factor comports with due process. — Gross receipts factor in view of the property and payroll factors of the three factor formula is not unreasonable on its face or violative of the taxpayer's rights under the due process clause of either the federal or state Constitutions. *United States Steel Corp. v. Undercofler*, 220 Ga. 553, 140 S.E.2d 269 (1965).

Taxable nexus for gross receipts purposes is the destination of the goods. — That the shipment of goods is F.O.B. an out-of-state factory to customers in this state makes no difference in the application of this factor. *Undercofler v. United States Steel Corp.*, 109 Ga. App. 8, 135 S.E.2d 69 (1964), *aff'd*, 220 Ga. 553, 140 S.E.2d 269 (1965).

Adoption of "destination" or "place of market" theory for apportioning gross receipts. — O.C.G.A. § 48-7-31(d)(2)(C) must be construed in accordance with prior judicial interpretations of the law, which held that the legislature, in enacting the predecessor to that section, intended to adopt the "destination" or "place of market" theory for apportioning gross receipts under the statute. *Strickland v. Patcraft Mills, Inc.*, 251 Ga. 43, 302 S.E.2d 544 (1983).

Destination test, as opposed to the "transfer of physical possession" theory, is easy to apply and is not subject to manipulation by taxpayers. *Strickland v. Patcraft Mills, Inc.*, 251 Ga. 43, 302 S.E.2d 544 (1983).

Destination test correctly recognizes the contribution by a consumer state to the realization of corporate income, and acknowledges that the process of manufacturing results in no profits until it ends in sales. *Strickland v. Patcraft Mills, Inc.*, 251 Ga. 43, 302 S.E.2d 544 (1983).

Limitations as to receipts included in computing gross receipts factor. — That portion of subdivision (4)(c) (now (d)(2)(c)) of this section which read, "for the purposes of this section (now subparagraph) receipts shall be deemed to have been derived from business done within this state only if received from products shipped to customers in this state, or delivered within this state to customers,"

Gross Receipts Factor (Cont'd)

simply meant that receipts from products shipped to customers outside of this state or delivered to customers outside of this state should not be included as being Georgia receipts. *Oxford v. Nehi Corp.*, 215 Ga. 74, 109 S.E.2d 329 (1959).

Receipts referred to in a portion of subdivision (4)(c) of this section reading "in determining the gross receipts within this state, receipts from sales negotiated or effected through offices of the taxpayer outside the state and delivered from storage in this state to customers outside this state shall be excluded," were receipts for sales effected outside of the state for products delivered to customers outside the state, have no reference to the kind of receipts referred to in the first part of that subdivision (now subparagraph), and neither included, limited, excluded, or affected the receipts from "products shipped to customers in this state or products delivered within this state to customers." *Oxford v. Nehi Corp.*, 215 Ga. 74, 109 S.E.2d 329 (1959).

Receipts from carpet sales made by taxpayer to out-of-state customers who took possession of the goods at the taxpayer's place of business in Dalton, Georgia, for immediate transport and resale out of state did not constitute "gross receipts from business done within this state" for purposes of the three factor formula for determining the taxable income of multistate corporations in Georgia under O.C.G.A. § 48-7-31(d)(2). *Strickland v. Patcraft Mills, Inc.*, 251 Ga. 43, 302 S.E.2d 544 (1983).

Net Income of Subsidiaries and Affiliates

Purpose of provisions as to subsidiaries and affiliates. — Obvious purpose of subsection (6) of this section, as a whole, as stated in the first sentence, was to pierce the veil of a corporate entity to reflect income as if all transactions with a parent corporation or an affiliate were at arm's length. *Blackmon v. Campbell Sales Co.*, 125 Ga. App. 859, 189 S.E.2d 474 (1972).

Construction of provisions as to subsidiaries and affiliates with other

provisions. — Bifurcated accounting rule of subsection (6) of former Code 1933, § 92-3113 (see O.C.G.A. § 48-7-31) did not render former Code 1933, § 92-3209 (see O.C.G.A. § 48-7-58) meaningless because the purpose of former Code 1933 § 92-3207 was much broader than specific accounting rules provided in that former section. *Blackmon v. Campbell Sales Co.*, 125 Ga. App. 859, 189 S.E.2d 474 (1972).

Commissioner alone may pierce corporate veils and apply a unitary theory to determine equitably net income by reasonable rules of apportionment. *Blackmon v. Campbell Sales Co.*, 125 Ga. App. 859, 189 S.E.2d 474 (1972).

Duty to determine net income of subsidiaries and affiliates. — First sentence of subsection (6) of this section, in failing to state who shall make adjustments, imposed a mandatory obligation on the taxpayer and the commissioner, to determine net income of the subsidiary or affiliate. *Blackmon v. Campbell Sales Co.*, 125 Ga. App. 859, 189 S.E.2d 474 (1972).

Commissioner's power discretion-ary. — The second sentence of subsection (6) of this section (see now subsection (e)), unlike the first, stated a discretionary rule. *Blackmon v. Campbell Sales Co.*, 125 Ga. App. 859, 189 S.E.2d 474 (1972).

Commissioner's power may be exercised only when mandatory rule cannot be used. — The two sentences of subsection (6) of this section must be read together, the second as limited by the first, which as a mandatory rule has priority. In order to exercise the discretion under the second rule, the commissioner must find that the income of the taxpayer cannot be adjusted in the manner first prescribed. *Blackmon v. Campbell Sales Co.*, 125 Ga. App. 859, 189 S.E.2d 474 (1972).

No basis for application of unitary theory when taxpayer has done all the law requires. — When findings of fact reflect that the taxpayer has done all that the law requires, no basis exists for the commissioner to rely upon the second sentence of subsection (6) of this section as authority to apply the unitary theory. *Blackmon v. Campbell Sales Co.*, 125 Ga. App. 859, 189 S.E.2d 474 (1972).

Mere existence of unitary business is not test for exercising discretion vested in the commissioner under the sec-

ond sentence of subsection (6) of this section. *Blackmon v. Campbell Sales Co.*, 125 Ga. App. 859, 189 S.E.2d 474 (1972).

OPINIONS OF THE ATTORNEY GENERAL

Due process limits on what constitutes doing business. — This section is necessarily limited by the requirements of due process so that isolated, casual, and intermittent activity incidental to the conduct of a business conducted in another state does not constitute doing business in this state. 1960-61 Op. Att'y Gen. p. 497; 1960-61 Op. Att'y Gen. p. 498; 1960-61 Op. Att'y Gen. p. 500.

Tax on net worth, not franchise or privilege of doing business. — Income tax provided for under this section is imposed upon net income of the corporation and not upon the franchise or the privilege of doing business. 1950-51 Op. Att'y Gen. p. 373.

No right to file consolidated returns. — General Assembly, by adopting former Code 1933, § 92-3202 did not give to corporate taxpayers, for Georgia income tax purposes, the right to file consolidated income tax returns. 1969 Op. Att'y Gen. No. 69-77.

Taxpayer may amend filing unauthorized under § 48-7-34. — Company which filed the company's income tax return under former Code 1933, § 92-3114 (see O.C.G.A. § 48-7-34), which return was accepted by the commissioner, although no express consent was given by the latter permitting the filing under former § 92-3114, may nevertheless within the statute of limitations amend the company's return by filing under former Code 1933, § 92-3113 (see O.C.G.A. § 48-7-31) and procure any refund to which the company may be entitled, since the first filing was unauthorized and therefore did not work an estoppel. 1952-53 Op. Att'y Gen. p. 434.

What activity constitutes doing business in this state. — Branch manufacturing shop in this state, shipping all its completed goods to a main plant located outside the state, which in turn makes all sales, is taxable under laws of this state to the extent that the operation in this state produced income to the main

corporation and, therefore, is considered as doing business in Georgia. 1954-56 Op. Att'y Gen. p. 703.

Corporation stocking wares in this state for shipment to consumers in southeast is doing business in this state and is subject to taxation. 1957 Op. Att'y Gen. p. 280.

Foreign corporation which leases furniture, fixtures, and equipment to a company in this state for the operation of a store is doing business in this state, and is subject to the payment of income tax upon the rent received for such fixtures. 1958-59 Op. Att'y Gen. p. 366.

When a foreign corporation merely qualifies as a fiduciary or merely holds a fiduciary title to property located in this state, and engages in no other activity in this state with respect to such property, it is not engaged in sufficient activity in this state to constitute its personally doing business in this state. Such corporation, as a fiduciary, would have an income tax liability on account of income or gains derived from such property. 1960-61 Op. Att'y Gen. p. 497.

When an out-of-state lending institution intermittently merely purchases from a Georgia real estate and mortgage company notes secured by mortgages on Georgia real estate, such activity was not enough to constitute doing business in this state for purposes of income tax liability under former Code 1933, §§ 92-3102 and 92-3173. 1960-61 Op. Att'y Gen. p. 501.

Foreign corporation which merely maintains a bank account in a bank located in this state is not engaged in sufficient activity in this state to constitute doing business under this section; nor would the activity of a bank located in this state which receives collections from the customers of such corporation and deposits those collections to such account be attributed to the foreign corporation. 1960-61 Op. Att'y Gen. p. 500.

Income received by a nonresident from a certificate of deposit issued by a Georgia

bank would not be subject to income tax in this state unless the certificate of deposit had been acquired as income from property otherwise held in this state, or as the result of regular conduct by a nonresident of a business dealing in such intangibles within the State of Georgia. 1967 Op. Att'y Gen. No. 67-250.

Loan business conducted through employee, agent, or place of business in state constitutes doing business. — When a foreign corporation has a place of business in this state out of which an employee or agent solicits applications for loans to be there approved or executed, or to be submitted to an out-of-state office for approval or execution, or makes reports concerning applicants and the proffered security, etc., or makes collections on loans, or otherwise services such loans, it is doing business in this state. A foreign corporation which has no place of business in this state but does have an employee or agent in this state who is regularly engaged in any of the activities described above is doing business in this state. 1960-61 Op. Att'y Gen. p. 498.

Joint venture or partnership in such business. — If a foreign corporation is in partnership or in a joint venture with a local independent business which negotiates, effects, sells, or assigns loans secured by property in this state, the activity of the local independent business is attributable to the foreign corporation and it is doing business in this state. 1960-61 Op. Att'y Gen. p. 498.

When foreign corporation purchases or is assigned loans effected by local independent business. — When a local independent business, for the business's own account and not as an employee or agent of a foreign corporation, negotiates and effects loans secured by mortgages against property located in this state, and thereafter sells or assigns outright such loans, in whole or part, to a foreign corporation which is not otherwise

regularly engaged in activity within this state, such foreign corporation is not doing business in this state even though the corporation contracts with such local business to collect and service such loans, and makes occasional inspections of the security. 1960-61 Op. Att'y Gen. p. 498.

When borrower contacts foreign corporation outside state even if loan secured by property in state. — If a foreign corporation has no place of business in this state nor any employee who is regularly engaged in activities in this state, and a borrower goes to or contacts the foreign corporation at the corporation's place of business outside this state to arrange a loan secured by property located in this state, and the corporation is regularly engaged in no other activity in this state, the foreign corporation is not engaged in sufficient activities to constitute doing business in this state merely because the property securing such loan is located in this state or because the corporation sends or brings the security instrument into this state for incidental or recording purposes. 1960-61 Op. Att'y Gen. p. 498.

What income taxable as result of foreclosure by out-of-state lender on Georgia realty. — When an out-of-state financial institution incidentally forecloses on Georgia property and holds that property for a reasonable time before the property can be disposed of by sale, there is no "doing business" within the state and such activities, while it would subject the income from the property involved to this state's income tax, would not subject the out-of-state institution to income tax on that portion of its entire investment portfolio which incidentally happened to be secured by real property located in Georgia. 1968 Op. Att'y Gen. No. 68-384.

Any sale or distribution of any alcoholic beverage within this state falls within section. 1950-51 Op. Att'y Gen. p. 369.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 170 et seq.
C.J.S. — 84 C.J.S., Taxation, §§ 155 et

seq., 166 et seq., 214. 85 C.J.S., Taxation, §§ 1831, 1834, 1845 et seq.

ALR. — "Business situs" for purposes of

property taxation of intangibles in state other than domicile of owner, 76 ALR 806; 143 ALR 361.

Power of state to extend its taxing power by its definition of residence or its declared policy of domesticating foreign corporations, 100 ALR 1216.

State excise, privilege, or franchise tax upon foreign corporation as affected by commerce clause, 105 ALR 11; 139 ALR 950.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 ALR 943.

Income of subsidiary as taxable to it or to parent corporation, 10 ALR2d 576.

Loading or unloading interstate freight in performance of obligation resting upon one other than interstate carrier as interstate commerce as regards local taxation, 10 ALR2d 651.

Validity, under federal Constitution, of state tax on, or measured by, income of foreign corporation, 67 ALR2d 1322.

State income tax treatment of partnerships and partners, 2 ALR6th 1.

What constitutes trade or business under Internal Revenue Code (U.S.C.A. Title 26), 161 ALR Fed. 245.

Protection of out-of-state sellers from state income tax by Public Law 86-272 (15 U.S.C.A. §§ 381 to 384), 182 ALR Fed. 291.

48-7-31.1. Conditions for allocating taxpayer's income pursuant to agreement; public inspection; criteria for evaluating proposals.

(a) For purposes of paragraphs (1) and (2) of subsection (d) of Code Section 48-7-31, the commissioner may enter into an agreement with a taxpayer establishing the allocation and apportionment of the taxpayer's income for a limited period, provided that the following conditions are met:

(1) The taxpayer is planning a new facility in the State of Georgia or an expansion of an existing facility;

(2) The taxpayer submits a proposal asking the commissioner to enter into a contract under this Code section requesting a different allocation and apportionment method and stating the reasons for such proposal; and

(3) Following the commissioner's referral of the proposal to a panel composed of the commissioner of community affairs, the commissioner of economic development, and the director of the Office of Planning and Budget, said panel, after reviewing the proposal, certifies that:

(A) The new facility or expansion will have a significant beneficial economic effect on the region for which it is planned; and

(B) The benefits to the public from the new facility or expansion exceed its costs to the public.

(b) The following records shall constitute public records that are open for inspection under the provisions of Article 4 of Chapter 18 of Title 50:

(1) Proposals submitted by taxpayers under this Code section or under any prior Code section that allowed taxpayers to enter into a contract or agreement with the commissioner to use a different allocation method, a different apportionment method, or both; and

(2) Any agreement or contract entered into as a result of such proposal.

(c) Taxpayers' tax information from any state or federal income tax return contained in records subject to disclosure pursuant to subsection (b) of this Code section which would otherwise be privileged or protected from disclosure by law shall be deleted or redacted from records made available for public inspection.

(d) In evaluating proposals pursuant to subsection (a) of this Code section, the panel shall not determine that a proposal has significant beneficial economic effect on the region for which it is planned unless two or more of the following criteria are met:

(1) The proposal creates new full-time jobs that meet the requirements contained in Regulations 110-9-1-.01, 110-9-1-.02, and 110-9-1-.03 of the Department of Community Affairs, relating to job tax credits, with average wages which are, as determined by the Georgia Department of Labor for all jobs for the county in question:

(A) Twenty percent above such average wage for projects located in tier 1 counties;

(B) Ten percent above such average wage for projects located in tier 2 counties; or

(C) Five percent above such average wage for projects located in tier 3 or tier 4 counties;

(2) The project invests in qualified investment property, as defined in Regulation 560-7-8-.37 of the department, which is valued at over \$10 million in tier 1 counties, over \$35 million in tier 2 counties, and over \$75 million in tier 3 or tier 4 counties. Past investment will not be considered;

(3) The proposal creates a minimum of 50 new full-time jobs that meet the requirements contained in Regulations 110-9-1-.01, 110-9-1-.02, and 110-9-1-.03 of the Department of Community Affairs, relating to job tax credits, in a tier 1 county, 150 such jobs in a tier 2 county, or 300 such jobs in a tier 3 or tier 4 county; or

(4) The proposal demonstrates high growth potential based upon the prior year's Georgia net taxable income growth of over 20 percent from the previous year, if the company's Georgia net taxable income in each of the two preceding years also grew by 20 percent or more.

(Code 1981, § 48-7-31.1, enacted by Ga. L. 2001, p. 984, § 6; Ga. L. 2002, p. 372, § 5; Ga. L. 2004, p. 690, § 18.)

Editor's notes. — Ga. L. 2001, p. 984, § 20, not codified by the General Assembly, provides that the 2001 amendment shall be applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that §§ 1-4, 6, and 8-14 of this Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Law reviews. — For article, "Revenue

and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

For note on the 2001 enactment of this Code section, see 18 Ga. St. U.L. Rev. 294 (2001).

48-7-32. Taxation of railroad and public service corporations; computation of net income where business is within and outside state; net income for all other such corporations.

(a) When the business of any corporation engaged in the operation of a railroad, express service, telephone or telegraph business, or other form of public service is partly within and partly outside the state, the net income of the corporation for the purpose of this chapter shall be that amount ascertained by apportioning to the state the sum of the net income of the corporation including, but not limited to, dividend income that may legally be taxed by the state (exclusive of income from tax-exempt securities and without any deduction for federal and state income taxes), as shown by the corporation's records kept in accordance with the standard classification of accounts prescribed by the Interstate Commerce Commission when the standard classification of accounts includes in net income rents from all sources; and when the standard classification does not include all rents, then such rents shall be included in net income in the proportion that the total gross operating revenues from business done wholly within the state plus the equal mileage proportion within the state of all gross operating revenues from interstate business of the company, wherever done, bear to the total gross operating revenues from all business done by the company. If any such corporation keeps its records of operating revenues and operating expenses on a state basis in accordance with the standard classification of accounts prescribed by the Interstate Commerce Commission and in a manner which includes in net income for the state the effect of all intrastate and interstate business applicable to the state, the state records may be used by the taxpayer under the supervision of the commissioner in reporting the net taxable income within the state.

(b) All other corporations engaged in the business of operating a railroad, express service, telephone or telegraph business, or other form of public service, whether or not the corporation is required to make

reports to the Interstate Commerce Commission, shall keep records according to the standard classifications of accounting of the Interstate Commerce Commission. The net income of the corporation including, but not limited to, dividend income that can legally be taxed by the state (exclusive of tax-exempt securities and without any deduction for federal and state income taxes) shall be determined in accordance with such records. If any such corporation keeps its records of operating revenues and operating expenses on a state basis in accordance with the standard classification of accounts prescribed by the Interstate Commerce Commission and in a manner which includes in net income for the state the effect of all intrastate and interstate business applicable to the state, the state records may, with the consent of the commissioner, be used by the taxpayer in reporting the net taxable income within the state. (Ga. L. 1931, Ex. Sess., p. 24, § 18; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3116; Code 1933, § 91A-3614, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 112A; Ga. L. 1987, p. 191, § 2.)

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and

refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

JUDICIAL DECISIONS

Scope of commissioner's discretion under section. — Discretion of the commissioner, if any, allowed by this section refers to the method of computation and records of corporations which keep records

on a state basis, and does not refer to the method and records in the other parts of the section. *Atlanta, Birmingham & Coast R.R. v. Forrester*, 69 Ga. App. 369, 25 S.E.2d 581 (1943).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 353 et seq.

C.J.S. — 85 C.J.S., Taxation, § 1836 et seq.

ALR. — What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 ALR 943.

48-7-33. Annual accounting periods.

(a) The net income shall be computed upon the basis of the taxpayer's annual accounting period in accordance with the method of accounting regularly employed in keeping the books of the taxpayer. If no

such method of accounting has been so employed or if the method employed does not clearly reflect the income, the computation shall be made in accordance with the method which, in the opinion of the commissioner, clearly reflects the income. If the taxpayer's annual accounting period is other than a fiscal year or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. A taxpayer utilizing a fiscal year may return his net income under this chapter on the basis of his fiscal year with the approval of the commissioner and subject to such rules and regulations as the commissioner may establish.

(b) With the approval of the commissioner and under such regulations as he may prescribe, a taxpayer may change his taxable year from fiscal year to calendar year or otherwise. In the case of any such change, the net income shall be computed upon the basis of the new taxable year when approval is obtained from the commissioner at least 30 days prior to the close of the proposed taxable year.

(c) The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer unless, under methods of accounting permitted by this Code section, any amounts of gross income are to be properly accounted for as of a different period.

(d) The deductions and credits provided for in this chapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred" depending upon the method of accounting on the basis of which the net income is computed unless, in order to clearly reflect the income, the deductions or credits should be taken as of a different period.

(e) Whenever in the opinion of the commissioner it is necessary in order to determine clearly the income of any taxpayer, inventories shall be taken by the taxpayer on the basis prescribed by the commissioner. Each such basis shall conform as nearly as possible to the best accounting practice in the particular trade or business which most clearly reflects the income.

(f) If a return has been filed within the three years immediately preceding the date of the taxpayer's death, income and expenses of a taxpayer who dies during the taxable year shall be computed on the same method of accounting, whether cash or accrual, as was used by the taxpayer in the preparation of the last income tax return filed by him with the commissioner. If no return has been filed within the three-year period, the return of a deceased taxpayer shall be prepared on the cash method unless the commissioner certifies that the cash method, because of particular circumstances, is not reasonable to either the state or the heirs, legatees, or devisees interested in the taxpayer's estate. If

the commissioner certifies that the cash method is unreasonable, he may order the preparation of the return on the accrual method.

(g) The provisions of Internal Revenue Code Section 441(f) regarding the election of a taxable year consisting of 52-53 weeks shall also apply for purposes of this chapter. Accordingly, when the effective date or the applicability of any provision of this chapter or any general law is expressed in terms of taxable years beginning with reference to a specified date which is the first day of a month, a 52-53 week taxable year shall be treated:

(1) As beginning with the first day of the calendar month beginning nearest to the first day of such 52-53 week taxable year; and

(2) As ending with the last day of the calendar month ending nearest to the last day of such 52-53 week taxable year.

(h) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Ga. L. 1931, Ex. Sess., p. 24, § 20; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3118; Ga. L. 1941, p. 210, § 6; Ga. L. 1945, p. 483, §§ 1, 2; Ga. L. 1978, p. 1444, § 1; Code 1933, § 91A-3616, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 70; Ga. L. 1987, p. 191, § 2; Ga. L. 2006, p. 221, § 1/HB 1042.)

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that

provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 2006, p. 221, § 2/HB 1042, not codified by the General Assembly, provides that subsections (g) and (h) shall be applicable to all taxable years beginning on or after January 1, 2006, and to all taxable years which would be considered as beginning on January 1, 2006.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 484 et seq.

C.J.S. — 85 C.J.S., Taxation, § 1831.

ALR. — Year in which loss or bad debt must be charged in order to be allowed as a deduction from taxpayer's income, 67 ALR 1015; 21 ALR 697; 135 ALR 1430.

Right of bank in computing income tax

to deduction corresponding to amount which it has been required by banking authorities to write down or charge off in respect of securities held by it, 100 ALR 702.

Method of calculating value of stock of goods or the like for purposes of tangible personal property tax, 66 ALR2d 833.

48-7-34. Returns of corporations and nonresidents based upon books of account; application to commissioner; time; contents.

If any corporation or nonresident employs in its books of account a detailed allocation of receipts and expenditures which reflects more clearly than the processes or formulas prescribed by this chapter the income attributable to the trade or business within this state, application for permission to base its return upon the books of account shall be considered by the commissioner. The application shall be made at least 60 days prior to the last day on which the taxpayer's return is to be filed and shall be accompanied by a full and complete explanation of the method employed. (Ga. L. 1931, Ex. Sess., p. 24, § 16; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3114; Code 1933, § 91A-3612, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2.)

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

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Law reviews. — For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973).

JUDICIAL DECISIONS

Alternative means of computing Georgia-derived income. — Former Code 1933, §§ 92-3114 and 92-3115 (see O.C.G.A. §§ 48-7-34 and 48-7-35) confer upon nonresidents and corporations the right to seek alternative methods of determining their Georgia-derived income when such methods would more accurately reflect that income than would former Code 1933, § 92-3113 (see O.C.G.A. § 48-7-31). *Henry C. Beck Co. v. Blackmon*, 131 Ga. App. 634, 206 S.E.2d 842 (1974), *aff'd*, 233 Ga. 412, 211 S.E.2d 711 (1975).

Under former Code 1933, §§ 92-3114 and 92-3115 (see O.C.G.A. §§ 48-7-34 and 48-7-35) that part of the net income of a corporation engaged in the business of manufacturing or selling tangible personal property in this state, and else-

where, which should be allocated and apportioned to this state, may be determined. This is especially true when such a corporation in the corporation's regular business activities did not have all of the factors of the three factor formula in former Code 1933, § 92-3113 (see O.C.G.A. § 48-7-31). *State v. Coca Cola Bottling Co.*, 212 Ga. 630, 94 S.E.2d 708 (1956).

Commissioner not empowered to select basis for return when no request made. — No power is granted to the commissioner to decide personally, when no request is made, whether another formula would be more indicative of a taxpayer's tax situation. *Henry C. Beck Co. v. Blackmon*, 131 Ga. App. 634, 206 S.E.2d 842 (1974), *aff'd*, 233 Ga. 412, 211 S.E.2d 711 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Taxpayer may amend filing unauthorized under section. — Company which files the company's income tax return under former Code 1933, § 92-3114 (see O.C.G.A. § 48-7-34), which return was accepted by the commissioner, although no express consent was given by the latter permitting the filing under former § 92-3114, may nevertheless within

the statute of limitations amend the company's return by filing under former Code 1933, § 92-3113 (see O.C.G.A. § 48-7-31) and procure any refund to which the company may be entitled, since the first filing was unauthorized and therefore did not work an estoppel. 1952-53 Op. Att'y Gen. p. 434.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 494.

C.J.S. — 85 C.J.S., Taxation, §§ 1859, 1860, 1901 et seq.

48-7-35. Application for permission to use other method of allocation by corporation or nonresident; contents; effect of failure to receive notice of rejection.

If any corporation or nonresident shows by any method of allocation other than the processes or formulas prescribed by this chapter that another method reflects more clearly the income attributable to the trade or business within this state, application for permission to base its return upon the other method shall be considered by the commissioner. The application shall be accompanied by a statement setting forth in detail with full explanations the method the taxpayer believes will more clearly reflect its income from business within the state. If the commissioner concludes that the method of allocation and apportionment submitted by the taxpayer is in fact inapplicable and inequitable, he shall reject the application and shall so notify the taxpayer. Failure to receive the commissioner's notice shall not operate to relieve the taxpayer from liability for not filing the return on its due date utilizing the allocation and apportionment method prescribed by this chapter. (Ga. L. 1931, Ex. Sess., p. 24, § 17; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3115; Code 1933, § 91A-3613, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2.)

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and

refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

JUDICIAL DECISIONS

Alternative means of computing Georgia-derived income. — Under former Code 1933, §§ 92-3114 and 92-3115 (see O.C.G.A. §§ 48-7-34 and 48-7-35) that part of the net income of a corporation engaged in the business of manufacturing or selling tangible personal property in this state, and elsewhere, which should be allocated and apportioned to this state may be determined. This is especially true when such a corporation in the corporation's regular business activities does not have all of the factors of the three factor formula in former Code 1933, § 92-3113 (see O.C.G.A. § 48-7-31). *State v. Coca Cola Bottling Co.*, 212 Ga. 630, 94 S.E.2d 708 (1956).

Former Code 1933, §§ 92-3114 and 92-3115 (see O.C.G.A. §§ 48-7-34 and 48-7-35) confer upon nonresidents and

corporations the right to seek alternative methods of determining their Georgia-derived income when such methods would more accurately reflect that income than would former Code 1933, § 92-3113 (see O.C.G.A. § 48-7-31). *Henry C. Beck Co. v. Blackmon*, 131 Ga. App. 634, 206 S.E.2d 842 (1974), *aff'd*, 233 Ga. 412, 211 S.E.2d 711 (1975).

Commissioner not empowered to select basis for return when no request made. — No power is granted to the commissioner to decide personally, when no request is made, whether another formula would be more indicative of a taxpayer's tax situation. *Henry C. Beck Co. v. Blackmon*, 131 Ga. App. 634, 206 S.E.2d 842 (1974), *aff'd*, 233 Ga. 412, 211 S.E.2d 711 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Reasonable interpretation of section would require the taxpayer annually to file an application. 1948-49

Op. Att'y Gen. p. 376 (see O.C.G.A. § 48-7-35).

48-7-36. Tolling of time limits for filings by reason of war related service in armed forces.

In the case of an individual:

(1) Serving in the armed forces of the United States or in support of the armed forces of the United States in an area designated by the President of the United States by executive order as a "combat zone," as that term is defined by the Internal Revenue Code of 1986, at any time during the period designated by the President's executive order as the period of combat activities in the zone;

(2) Hospitalized as a result of an injury received while serving in such an area during the period of combat activities; or

(3) Who is confined as a prisoner of the forces opposing the United States in a combat zone,

the period of service in the combat zone, plus the period of continuous hospitalization attributable to an injury, plus any period of confinement, and the next 180 days thereafter shall be disregarded in determining whether any filing required by this title has been performed within the time prescribed for the filing. (Code 1933, § 92-3122,

enacted by Ga. L. 1971, p. 605, § 8; Code 1933, § 91A-3617, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "United States" was deleted preceding "Internal Revenue Code" in paragraph (1).

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by

the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

RESEARCH REFERENCES

ALR. — Military service as basis of discrimination in statutes or ordinances relating to taxation or licenses, 83 ALR 1231.

48-7-37. Taxes due from members of armed forces dying on active duty; applicability of tax to particular taxable years; assessment of unpaid taxes; abatement; credit or refund of collected payments.

In the case of any individual who dies while in active service as a member of the armed forces of the United States, if the death occurred while serving in a combat zone, as that term is defined by the Internal Revenue Code of 1986, or as a result of wounds, disease, or injury incurred while so serving, any tax imposed by this article:

(1) Shall not apply with respect to the taxable year in which falls the date of his death or with respect to any prior taxable year ending on or after the first day he served in a combat zone after June 24, 1960;

(2) For a taxable year preceding those specified in paragraph (1) of this Code section which is unpaid at the date of his death including, but not limited to, interest, additions to the tax, and additional amounts shall not be assessed. If assessed, the assessment shall be abated. If any such amount is collected, it shall be credited or refunded as an overpayment. (Code 1933, § 92-3123, enacted by Ga. L. 1971, p. 605, § 8; Code 1933, § 91A-3618, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "United States" was deleted preceding "Internal Revenue Code" in the introductory language.

Editor's notes. — Ga. L. 1987, p. 191,

§ 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

RESEARCH REFERENCES

ALR. — Military service as basis of discrimination in statutes or ordinances relating to taxation or licenses, 83 ALR 1231.

Income tax on income of taxpayer who dies during taxable year, 142 ALR 213.

48-7-38. Deduction for payments to minority subcontractors; certification as minority subcontractor.

(a) As used in this Code section, the term:

(1) "Member of a minority" means an individual who is:

- (A) Black;
- (B) Hispanic;
- (C) Asian-Pacific American;
- (D) Native American; or
- (E) Asian-Indian American.

(2) "Minority subcontractor" means any business which is owned by:

(A) An individual who is a member of a minority who reports as his or her personal income for Georgia income tax purposes the income of such business;

(B) A partnership in which a majority of the ownership interest is owned by one or more members of a minority who report as their personal income for Georgia income tax purposes more than 50 percent of the income of the partnership; or

(C) A corporation organized under the laws of this state in which a majority of the common stock is owned by one or more members of a minority who report as their personal income for Georgia income tax purposes more than 50 percent of the distributed earnings of the corporation.

(3) "State contract" means a contract for the purchase by the state of goods, property, or services or for the construction of any building or structure for the state, which contract is executed by any department, board, bureau, commission, or agency of state government, by any state authority, or by any officer, official, employee, or agent of any of the foregoing.

(b) In computing Georgia taxable net income of a corporation, partnership, or individual, there shall be subtracted from federal taxable income or federal adjusted gross income 10 percent of the amount of qualified payments to minority subcontractors. A payment to a minority subcontractor shall be a qualified payment if:

(1) The payment is for goods, personal property, or services furnished by the minority subcontractor to the taxpayer and delivered by the taxpayer to the state in furtherance of a state contract to which the taxpayer is a party; and the payment does not exceed the value of the goods, property, or services to the taxpayer;

(2) The payment is made during the taxable year for which the subtraction from federal taxable income or federal adjusted gross income is claimed; and

(3) The payment is made to a subcontractor who at the time of the payment is certified as a minority subcontractor pursuant to subsection (d) of this Code section.

(c) The total amount which may be subtracted under this Code section from federal taxable income or federal adjusted gross income of any taxpayer shall be limited to \$100,000.00 per taxable year.

(d) The commissioner of administrative services shall certify individuals, partnerships, and corporations which are within the definition of the term "minority subcontractor" specified in subsection (a) of this Code section. The department may disclose to the commissioner of administrative services the income tax returns of taxpayers applying for certification as minority subcontractors. The commissioner of administrative services shall maintain and periodically revise a list of certified minority subcontractors and shall make such list available to the department and to the general public.

(e) Any individual, partnership, or corporation certified pursuant to subsection (d) of this Code section and any small business concern which is at least 51 percent owned by one or more minorities, or, in the case of a publicly owned business, at least 51 percent of all classes or types of the stock of which is owned by one or more minorities, whose management and daily business operations are controlled by one or more minorities, and which is authorized to do and is doing business under the laws of this state paying all taxes duly assessed and

domiciled within this state shall be eligible for certification as a minority business enterprise under Code Section 50-5-132; and, for purposes of such certification pursuant to this subsection, “minority” shall be defined as a member of a minority. Such certification shall be subject to the provisions of Code Section 50-5-133. (Code 1981, § 48-7-38, enacted by Ga. L. 1984, p. 1644, § 3; Ga. L. 1987, p. 191, § 2; Ga. L. 2001, p. 105, § 1; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “minority subcontractor” for “minority contractor” in paragraph (b)(3).

Editor’s notes. — Ga. L. 1984, p. 1644, § 4, not codified by the General Assembly, provided that the Act would apply to taxable years beginning on or after January 1, 1985.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 2001, p. 105, § 4, not codified by the General Assembly, provides that the 2001 amendment shall be applicable to all taxable years ending on or after January 1, 2001.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U.L. Rev. 217 (2011).

48-7-39. Depreciation of property placed in service in prior tax years.

(a) With respect to property placed in service in taxable years ending prior to March 11, 1987, a taxpayer shall in his return for the first taxable year ending on or after January 1, 1987, elect to:

(1) Continue to depreciate or otherwise recover the cost of such property according to the same method used for Georgia income tax purposes for the taxable year in which the property was placed in service; or

(2) Depreciate or otherwise recover the cost of such property according to the method used for federal income tax purposes for the taxable year in which the property was placed in service.

The election required by this subsection shall be made for a taxpayer’s first taxable year ending on or after January 1, 1987, in such manner as may be specified by the commissioner. If a return for such a taxable year has been filed without such an election prior to or within 90 days after

March 11, 1987, the taxpayer may file an amended return containing such an election.

(b) The election provided for in subsection (a) of this Code section shall apply to all property of the taxpayer uniformly and shall be irrevocable and applicable to all subsequent taxable years. Except as otherwise provided in the last sentence of subsection (a) of this Code section, if no such election is made, the taxpayer shall be deemed to have elected the option afforded by paragraph (2) of subsection (a) of this Code section. The General Assembly recognizes and intends that if a taxpayer elects the option afforded by paragraph (2) of subsection (a) of this Code section then in certain cases the taxpayer may never fully depreciate or recover the cost of certain property for Georgia income tax purposes and in certain cases the taxpayer may be allowed to depreciate or recover more than the full cost of certain property for Georgia income tax purposes. Taxpayers electing the option afforded by paragraph (1) of subsection (a) of this Code section shall in determining Georgia taxable income make such adjustments to federal taxable income as are required to reflect the effect of such election. Any such election shall apply both to determination of deductions for depreciation or cost recovery of affected property and also to determination of gain or loss on the sale or other disposition of such property. The commissioner shall specify the manner in which such adjustments shall be made. (Code 1981, § 48-7-39, enacted by Ga. L. 1987, p. 191, § 2; Ga. L. 2002, p. 415, § 48.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, a second “of” was deleted following “paragraph (1) of subsection (a) of” in the fourth sentence of subsection (b).

Editor’s notes. — Ga. L. 1987, p. 191, § 2, effective March 11, 1987, repealed this Code section and enacted the present Code section. The former Code section, related to taxing the income of small business corporations under Subchapter S, was enacted by Ga. L. 1984, p. 1323, § 2 as Code Section 48-7-38 and was redesignated as this Code section pursuant to Code Section 28-9-5.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a

taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

48-7-40. Designation of counties as less developed areas; tax credits for certain business enterprises.

(a) As used in this Code section, the term:

(1) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. "Broadcasting" is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(2) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises, warehousing and distribution, processing, telecommunications, broadcasting, tourism, research and development industries, biomedical manufacturing, and services for the elderly and persons with disabilities. Such term shall not include retail businesses. Businesses are eligible for the tax credit provided by this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term "establishment" means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

(3) "Competitive project" means expansion or location of some or all of a business enterprise's operations in this state having significant regional impact where the commissioner of economic development certifies that but for some or all of the tax incentives provided in this Code section, the business enterprise would have located or expanded outside this state.

(4) "Existing business enterprise" means any business or the headquarters of any such business which has operated for the immediately preceding three years a facility in this state which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises, warehousing and distribution, processing, telecommunications, broadcasting, tourism, biomedical manufacturing, or research and development industries. Such term shall not include retail businesses. Businesses are eligible for the tax credit provided by this Code section

at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term "establishment" means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

(5) "New full-time employee job" means a newly created position of employment that was not previously located in this state, requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(b)(1) Not later than December 31 of each year, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner of community affairs shall rank and designate as less developed areas all 159 counties in this state using a combination of the following equally weighted factors:

(A) Highest unemployment rate for the most recent 36 month period;

(B) Lowest per capita income for the most recent 36 month period; and

(C) Highest percentage of residents whose incomes are below the poverty level according to the most recent data available.

(2) Counties ranked and designated as the first through seventy-first least developed counties shall be classified as tier 1, counties ranked and designated as the seventy-second through one hundred sixth least developed counties shall be classified as tier 2, counties ranked and designated as the one hundred seventh through one hundred forty-first least developed counties shall be classified as tier 3, and counties ranked and designated as the one hundred forty-second through one hundred fifty-ninth least developed counties shall be classified as tier 4.

(c) The commissioner of community affairs shall be authorized to include in the tier 2 designation provided for in subsection (b) of this Code section any tier 3 county which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises

located in such county. No designation made pursuant to this subsection shall operate to displace or remove any other county previously designated as a tier 2 county.

(c.1) The commissioner of community affairs shall be authorized to include in the tier 1 designation provided for in subsection (b) of this Code section any tier 2 county which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county. No designation made pursuant to this subsection shall operate to displace or remove any other county previously designated as a tier 1 county.

(d) For business enterprises which plan a significant expansion in their labor forces, the commissioner of community affairs shall prescribe redesignation procedures to ensure that the business enterprises can claim credits in future years without regard to whether or not a particular county is reclassified in a different tier.

(e)(1) Business enterprises in counties designated by the commissioner of community affairs as tier 1 counties shall be allowed a tax credit for taxes imposed under this article equal to \$3,500.00 annually per eligible new full-time employee job for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years; provided, however, that where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year \$3,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this paragraph. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this paragraph shall not constitute income to the taxpayer. Business enterprises in counties designated by the commissioner of community affairs as tier 2 counties shall be allowed a job tax credit for taxes imposed under this article equal to \$2,500.00 annually, business enterprises in counties designated by the commissioner of community affairs as tier 3 counties shall be allowed a job tax credit for taxes imposed under this article equal to \$1,250.00 annually, and business enterprises in counties designated

by the commissioner of community affairs as tier 4 counties shall be allowed a job tax credit for taxes imposed under this article equal to \$750.00 annually for each new full-time employee job for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years. Where a business enterprise is engaged in a competitive project located in a county designated by the commissioner of community affairs as a tier 2 county and where the amount of the credit provided in this paragraph exceeds such business enterprise's liability for taxes imposed under this article in a taxable year, or where a business enterprise is engaged in a competitive project located in a county designated by the commissioner of community affairs as a tier 3 or tier 4 county and where the amount of the credit provided in this paragraph exceeds 50 percent of such business enterprise's liability for taxes imposed under this article in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year \$2,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this paragraph. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this paragraph shall not constitute income to the taxpayer. The number of new full-time employee jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. In tier 1 counties, those business enterprises that increase employment by two or more shall be eligible for the credit. In tier 2 counties, only those business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 counties, only those business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those business enterprises that increase employment by 25 or more shall be eligible for the credit. The average wage of the new jobs created must be above the average wage of the county that has the lowest average wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this paragraph, the employer must make health insurance coverage available to the employee filling the new full-time

employee job; provided, however, that nothing in this paragraph shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this paragraph if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required in such tier.

(2) Existing business enterprises shall be allowed an additional tax credit for taxes imposed under this article equal to \$500.00 per eligible new full-time employee job the first year in which the new full-time employee job is created. The additional credit shall be claimed in the first taxable year in which the new full-time employee job is created. The number of new full-time employee jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. In tier 1 counties, those existing business enterprises that increase employment by five or more shall be eligible for the credit. In tier 2 counties, only those existing business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 counties, only those existing business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those existing business enterprises that increase employment by 25 or more shall be eligible for the credit. The average wage of the new jobs created must be above the average wage of the county that has the lowest average wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this paragraph, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this paragraph shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this paragraph if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. Any credit generated and utilized for years prior to the year in which the net employment increase falls below the number required in such tier shall not be affected. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required in such tier. This para-

graph shall apply only to new eligible full-time jobs created in taxable years beginning on or after January 1, 2006, and ending no later than taxable years beginning prior to January 1, 2011.

(f) Tax credits for five years for the taxes imposed under this article shall be awarded for additional new full-time employee jobs created by business enterprises qualified under subsection (b), (c), or (c.1) of this Code section. Additional new full-time employee jobs shall be determined by subtracting the highest total employment of the business enterprise during years two through five, or whatever portion of years two through five which has been completed, from the total increased employment. The state revenue commissioner shall adjust the credit allowed in the event of employment fluctuations during the five years of credit.

(g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The commissioner of community affairs shall determine whether or not qualifying net increases or decreases have occurred and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(h) Any credit claimed under this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified jobs were established, subject to forfeiture as provided in paragraph (1) of subsection (e) of this Code section, but in tiers 3 and 4 the credit established by this Code section taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year. In tier 1 and 2 counties, the credit allowed under this Code section against taxes imposed under this article in any taxable year shall be limited to an amount not greater than 100 percent of the taxpayer's state income tax liability attributable to income derived from operations in this state for such taxable year.

(i) Notwithstanding any provision of this Code section to the contrary, in counties recognized and designated as the first through fortieth least developed counties in the tier 1 designation, job tax credits shall be allowed as provided in this Code section, in addition to business enterprises or existing business enterprises, to any business of any nature.

(j) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section shall be claimed within one year of the earlier of the date the original tax return was filed or the date such return was

due as prescribed in subsection (a) of Code Section 48-7-56, including any approved extensions.

(k) The commissioner may require such reports, promulgate such regulations, and gather such relevant data necessary and advisable for the evaluation of the job tax credits established by this Code section.

(l) Taxpayers that initially claimed the credit under this Code section for any taxable year beginning before January 1, 2012, shall be governed, for purposes of all such credits claimed as well as any credits claimed in subsequent taxable years related to such initial claim, by this Code section as it was in effect for the taxable year in which the taxpayer made such initial claim. (Code 1981, § 48-7-40, enacted by Ga. L. 1989, p. 905, § 1; Ga. L. 1992, p. 2031, § 1; Ga. L. 1994, p. 928, § 2; Ga. L. 1995, p. 585, § 1; Ga. L. 1996, p. 220, § 2; Ga. L. 1997, p. 461, § 1; Ga. L. 1998, p. 1224, § 2; Ga. L. 2000, p. 605, § 1; Ga. L. 2001, p. 984, § 7; Ga. L. 2005, p. 210, § 1/HB 389; Ga. L. 2008, p. 874, § 1/HB 1246; Ga. L. 2009, p. 654, § 1/HB 439; Ga. L. 2012, p. 1309, § 1/HB 868.)

The 2012 amendment, effective May 3, 2012, in paragraphs (a)(2) and (a)(4), inserted “including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises,” near the middle, inserted “biomedical manufacturing,” near the end, and added the third through fifth sentences; added paragraph (a)(5); in subsection (e), in paragraph (e)(1), inserted “employee” twice, substituted “two or more” for “five or more” in the ninth sentence, and deleted the former sixteenth and seventeenth sentences, which read: “In any year in which the net employment increase falls below the number required in such tier, the taxpayer shall forfeit the right to the credit claimed for that taxable year. For the year that the net employment increase falls below the number required in such tier, a taxpayer that forfeits such right is therefore liable for all past taxes imposed by this article for that taxable year and all past payments under Code Section 48-7-103 for that taxable year that were foregone by the state as a result of the credits provided by this Code section; provided, however, that Code Section 48-2-40 shall not apply to any such forfeiture.”, and inserted “employee” preceding “jobs” in the third sentence of paragraph (e)(2); in subsection (f), substituted

“five years” for “four years” in the first sentence, and inserted “employee” preceding “jobs” in the second sentence; substituted “Any credit” for “(1) Except as provided in paragraph (2) of this subsection, any” at the beginning of the first sentence of subsection (h); deleted former paragraph (h)(2), which read: “The additional credit claimed by an existing business enterprise pursuant to the provisions of paragraph (2) of subsection (e) of this Code section must be applied against taxes imposed for the taxable year in which such credit is available and may not be carried forward to any subsequent taxable year.”; and substituted “2012” for “2009” in subsection (l). See editor’s note for applicability.

Editor’s notes. — Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Business Expansion Support Act of 1994.’”

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 1995.

Ga. L. 1996, p. 220, § 11, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 1997.

Ga. L. 2000, p. 605, § 7, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2001, p. 984, § 20, not codified by the General Assembly, provides that the 2001 amendment is applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2005, p. 210, § 2/HB 389, not codified by the General Assembly, provides that the 2005 amendment to this Code section shall apply to all taxable years beginning on or after January 1, 2006.

Ga. L. 2008, p. 874, § 9/HB 1246, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2009, p. 654, § 7/HB 439, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable for all taxable years beginning on or after January 1, 2009.

Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Administrative rules and regulations. — Low emission vehicle certification, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Chapter 391-3-25.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U.L. Rev. 217 (2011).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 338 (1992). For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 344 (1992). For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 294 (2001).

48-7-40.1. Tax credits for business enterprises in less developed areas.

(a) As used in this Code section, the term:

(1) “Broadcasting” means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. “Broadcasting” is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(2) “Business enterprise” means any business or the headquarters of any such business which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products

for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises, warehousing and distribution, processing, telecommunications, broadcasting, tourism, biomedical manufacturing, and research and development industries. Such term shall not include retail businesses. Businesses are eligible for the tax credit provided by this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term "establishment" means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

(b) Not later than December 31 of each year, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner of community affairs shall rank and designate as less developed areas the areas composed of ten or more contiguous census tracts in this state using a combination of the following equally weighted factors:

- (1) Highest unemployment rate for the most recent 36 month period;
- (2) Lowest per capita income for the most recent 36 month period; and
- (3) Highest percentage of residents whose income is below the poverty level according to the most recent data available.

(c) The commissioner of community affairs, and the commissioner of economic development in areas qualifying under the provisions of paragraphs (1), (3), and (4) of this subsection, also shall be authorized to include in the designation provided for in subsection (b) of this Code section:

- (1) Any area composed of ten or more contiguous census tracts which, in the opinion of the commissioner of community affairs and the commissioner of economic development, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such area;
- (2) Any area composed of one or more census tracts adjacent to a federal military installation where pervasive poverty is evidenced by a 15 percent poverty rate or greater as reflected in the most recent decennial census;
- (3) Any area composed of one or more contiguous census tracts which, in the opinion of the commissioner of community affairs and

the commissioner of economic development, is or will be adversely impacted by the loss of one or more jobs, businesses, or residences as a result of an airport expansion, including noise buy-outs, or the closing of a business enterprise which, in the opinion of the commissioner of community affairs and the commissioner of economic development, results or will result in a sudden and severe period of economic distress; or

(4) Any area which is within or adjacent to one or more contiguous census block groups with a poverty rate of 15 percent or greater as determined from data in the most current United States decennial census, where the area is also included within a state enterprise zone pursuant to Chapter 88 of Title 36 or where a redevelopment plan has been adopted pursuant to Chapter 61 of Title 36 and which, in the opinion of the commissioner of community affairs and the commissioner of economic development, displays pervasive poverty, underdevelopment, general distress, and blight.

No designation made pursuant to this subsection shall operate to displace or remove any other area previously designated as a less developed area. Notwithstanding any provision of this Code section to the contrary, in areas designated as suffering from pervasive poverty under this subsection, job tax credits shall be allowed as provided in this Code section, in addition to business enterprises, to any lawful business.

(d) For business enterprises which plan a significant expansion in their labor forces, the commissioner of community affairs shall prescribe redesignation procedures to ensure that the business enterprises can claim credits in future years without regard to whether or not a particular area is removed from the list of less developed areas.

(e) Business enterprises in areas designated by the commissioner of community affairs as less developed areas shall be allowed a job tax credit for taxes imposed under this article equal to \$3,500.00 annually per eligible new full-time employee job for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years; provided, however, that where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year \$3,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which

would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the taxpayer. The number of new full-time jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those business enterprises that increase employment by five or more in a less developed area shall be eligible for the credit; provided, however, that within areas of pervasive poverty as designated under paragraphs (2) and (4) of subsection (c) of this Code section businesses shall only have to increase employment by two or more jobs in order to be eligible for the credit, provided that, if a business only increases employment by two jobs, the persons hired for such jobs shall not be married to one another. The average wage of the new jobs created must be above the average wage of the county that has the lowest wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this subsection, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this subsection shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this subsection if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below five or two, as applicable. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of five or two.

(f) Tax credits for five years for the taxes imposed under this article shall be awarded for additional new full-time employee jobs created by business enterprises qualified under subsection (b) or (c) of this Code section. Additional new full-time employee jobs shall be determined by subtracting the highest total employment of the business enterprise during years two through five, or whatever portion of years two through five which has been completed, from the total increased employment. The state revenue commissioner shall adjust the credit allowed in the event of employment fluctuations during the additional five years of credit.

(g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The commissioner of community affairs shall determine whether or not qualifying net

increases or decreases have occurred and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(h) Any credit claimed under this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified jobs were established, subject to forfeiture as provided in subsection (e) of this Code section, but the credit established by this Code section taken in any one taxable year shall be limited to an amount not greater than 100 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

(i) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section shall be claimed within one year of the earlier of the date the original tax return was filed or the date such return was due as prescribed in subsection (a) of Code Section 48-7-56, including any approved extensions.

(j) Taxpayers that initially claimed the credit under this Code section for any taxable year beginning before January 1, 2012, shall be governed, for purposes of all such credits claimed as well as any credits claimed in subsequent taxable years related to such initial claim, by this Code section as it was in effect for the taxable year in which the taxpayer made such initial claim. (Code 1981, § 48-7-40.1, enacted by Ga. L. 1993, p. 1649, § 2; Ga. L. 1994, p. 928, § 3; Ga. L. 1996, p. 220, §§ 3, 4; Ga. L. 1997, p. 461, § 2; Ga. L. 2000, p. 605, § 2; Ga. L. 2001, p. 984, § 8; Ga. L. 2004, p. 939, § 1; Ga. L. 2008, p. 874, § 2/HB 1246; Ga. L. 2008, p. 1152, § 1/HB 1273; Ga. L. 2009, p. 654, § 2/HB 439; Ga. L. 2012, p. 1309, § 2/HB 868; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2013, p. 677, § 2/SB 137.)

The 2012 amendment, effective May 3, 2012, in paragraph (a)(2), inserted "including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises," near the middle, inserted "biomedical manufacturing," near the end, and added the third through fifth sentences; deleted the former ninth and tenth sentences of subsection (e), which read: "In any year in which the net employment increase falls below five or two, as applicable, the taxpayer shall forfeit the right to the credit claimed for that taxable year. For the year that the net employment increase falls below five or two, as applicable, a taxpayer that forfeits such right is therefore liable for all past taxes imposed by this

article for that taxable year and all past payments under Code Section 48-7-103 for that taxable year that were foregone by the state as a result of the credits provided by this Code section; provided, however that Code Section 48-2-40 shall not apply to any such forfeiture"; in subsection (f), substituted "five years" for "four years" and inserted "employee" in the first and second sentences; and substituted "2012" for "2009" in subsection (j). See editor's note for applicability.

The 2013 amendments. — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "the areas composed of" for "the areas which are comprised of" in the introductory language of subsection (b) and substituted

“area composed of” for “area comprised of” in paragraphs (c)(1), (c)(2), and (c)(3). The second 2013 amendment, effective May 6, 2013, in subsection (c), inserted “affairs, and the commissioner of economic development in areas qualifying under the provisions of paragraphs (1), (3), and (4) of this subsection,” in the introductory language, substituted “area composed of” for “area comprised of” in paragraphs (c)(1), (c)(2), and (c)(3), and inserted “and the commissioner of economic development” in paragraphs (c)(1), (c)(3), and (c)(4).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, “this subsection” was substituted for “this paragraph” in the second sentence of the undesignated paragraph at the end of subsection (c).

Editor’s notes. — Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Business Expansion Support Act of 1994.’”

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provides that the 1994 amendment shall be “applicable to all taxable years beginning on or after January 1, 1994.”

Ga. L. 1996, p. 220, § 11, not codified by the General Assembly, provides that the 1996 amendment shall be “applicable to all taxable years beginning on or after January 1, 1996.”

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that the 1997 amendment shall be “applicable to all taxable years beginning on or after January 1, 1997.”

Ga. L. 2000, p. 605, § 7, not codified by the General Assembly, provides that the 2000 amendment shall be “applicable to all taxable years beginning on or after January 1, 2000.”

Ga. L. 2001, p. 984, § 20, not codified by the General Assembly, provides that the 2001 amendment “shall be applicable to

all taxable years beginning on or after January 1, 2001.”

Ga. L. 2004, p. 939, § 6, not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2004.

Ga. L. 2008, p. 874, § 9/HB 1246, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2008, p. 1152, § 2/HB 1273, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2009, p. 654, § 7/HB 439, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable for all taxable years beginning on or after January 1, 2009.

Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Administrative rules and regulations. — Job tax credit program regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Job Tax Credit Program, Chapter 110-9-1.

Opportunity zone tax credit program regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Opportunity Zone Tax Credit Program, Chapter 110-24-1.

Law reviews. — For note on 1993 enactment of this Code section, see 10 Ga. St. U.L. Rev. 218 (1993). For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 294 (2001).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state taxes on revenues and

income from communications satellite services, 51 ALR6th 257.

48-7-40.2. Tax credits for existing manufacturing and telecommunications facilities in tier 1 counties; conditions and limitations.

(a) As used in this Code section, the term:

(1) "Product" means a marketable product or component of a product which has an economic value to the wholesale or retail consumer and is ready to be used without further alteration of its form or a product or material which is marketed as a prepared material or is a component in the manufacturing and assembly of other finished products.

(2) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this paragraph.

(3) "Recovered materials" means those materials, including but not limited to such materials as aluminum, oil, plastic, paper, paper products, scrap metal, iron, glass, and rubber, which have known use, reuse, or recycling potential; can be feasibly used, reused, or recycled; and have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing.

(4) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

(5) "Recycling machinery and equipment" means all tangible personal property used, directly or indirectly, to sort, store, prepare, convert, process, fabricate, or manufacture recovered materials into finished products which are composed of at least 25 percent recovered materials, such term including, but not being limited to, power generation and pollution control machinery and equipment.

(6) "Recycling manufacturing facility" means any facility, including land, improvements to land, buildings, building improvements, and any recycling machinery and equipment used in the recycling process resulting in the manufacture of finished products from

recovered materials, provided that up to 10 percent of any building that is a component of a recycling facility may be used for office space to house support staff for the recycling operation.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility in this state in a tier 1 county designated pursuant to Code Section 48-7-40, there shall be allowed a credit against the tax imposed under this article in an amount equal to 5 percent of the cost of all qualified investment property purchased or acquired by the taxpayer in such year, subject to the conditions and limitations set forth in this Code section. In the event such qualified investment property purchased or acquired by the taxpayer in such year consists of recycling machinery or equipment, a recycling manufacturing facility, pollution control or prevention machinery or equipment, a pollution control or prevention facility, or the conversion from defense to domestic production, the amount of such credit shall be equal to 8 percent.

(c) The credit granted under subsection (b) of this Code section shall be subject to the following conditions and limitations:

(1) In order to qualify as a basis for the credit, the investment in qualified investment property must occur no sooner than January 1, 1995. The credit may be taken beginning with the tax year immediately following the tax year in which the qualified investment property having an aggregate cost in excess of \$50,000.00 is purchased or acquired by the taxpayer. For every year in which a taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's Georgia income tax return which will set forth the following information, as a minimum:

- (A) A description of the project;
- (B) The amount of qualified investment property acquired during the taxable year;
- (C) The amount of tax credit claimed for the taxable year;
- (D) The amount of qualified investment property acquired in prior taxable years;
- (E) Any tax credit utilized by the taxpayer in prior taxable years;
- (F) The amount of tax credit carried over from prior years;
- (G) The amount of tax credit utilized by the taxpayer in the current taxable year; and
- (H) The amount of tax credit to be carried over to subsequent tax years;

(2) Any credit claimed under this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified investment property was acquired, provided that such qualified investment property remains in service. The credit established by this Code section taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year. The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility in any succeeding taxpayer, but any unused credit may be transferred and continued by any transferee of the taxpayer;

(3) In the initial year in which the taxpayer claims the credit granted in subsection (b) of this Code section, the taxpayer shall include in the description of the project required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the project includes the acquisition of qualified investment property having an aggregate cost in excess of \$50,000.00;

(4) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing or telecommunications facility which would otherwise constitute qualified investment property shall be treated as the purchase or acquisition of qualified investment property by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the taxable year in which the lease becomes binding on the lessor and the taxpayer if all other conditions of this subsection have been met; and

(5) The utilization of the credit granted in subsection (b) of this Code section shall have no effect on the taxpayer's ability to claim depreciation for tax purposes on the assets acquired by the taxpayer, nor shall the credit have any effect on the taxpayer's basis in such assets for the purpose of depreciation.

(d)(1) Except as otherwise provided in paragraph (2) of this subsection, no taxpayer shall be authorized to claim on a tax return for a given project the credit provided for in this Code section if such taxpayer claims on such tax return any of the credits authorized under Code Section 48-7-40 or 48-7-40.1.

(2) For taxable years beginning on or after January 1, 1995, and ending on or prior to December 31, 1998, a taxpayer shall be authorized to claim on a tax return for a given project the credit provided for in this Code section and to claim, if otherwise qualified under Code Section 48-7-40, the tax credit applicable to tier 1 counties under Code Section 48-7-40, subject to the following limitations:

(A) Not less than 250 new full-time employee jobs must be created in the first taxable year and maintained through the end of the third taxable year in which the taxpayer claims both credits as authorized under this paragraph; and

(B) An otherwise qualified taxpayer shall not be entitled to receive the additional tax credit authorized under Code Section 36-62-5.1 in any taxable year in which that taxpayer claims both of the tax credits as authorized under this paragraph. (Code 1981, § 48-7-40.2, enacted by Ga. L. 1994, p. 928, § 4; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 585, § 2; Ga. L. 1996, p. 220, § 5; Ga. L. 1997, p. 461, § 3; Ga. L. 1998, p. 1224, § 3.)

Editor's notes. — Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provides that the 1994 amendment "shall be applicable to all taxable years beginning on or after January 1, 1994."

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that the 1995 amendment "shall be applicable to

all taxable years beginning on or after January 1, 1995."

Ga. L. 1996, p. 220, § 11, not codified by the General Assembly, provides that the 1996 amendment "shall be applicable to all taxable years beginning on or after January 1, 1996."

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that the 1997 amendment "shall be applicable to all taxable years beginning on or after January 1, 1997."

48-7-40.3. Tax credits for existing manufacturing and telecommunications facilities in tier 2 counties; conditions and limitations.

(a) As used in this Code section, the term:

(1) "Product" means a marketable product or component of a product which has an economic value to the wholesale or retail consumer and is ready to be used without further alteration of its form or a product or material which is marketed as a prepared material or is a component in the manufacturing and assembly of other finished products.

(2) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this paragraph.

(3) "Recovered materials" means those materials, including but not limited to such materials as aluminum, oil, plastic, paper, paper products, scrap metal, iron, glass, and rubber, which have known use, reuse, or recycling potential; can be feasibly used, reused, or recycled; and have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing.

(4) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

(5) "Recycling machinery and equipment" means all tangible personal property used, directly or indirectly, to sort, store, prepare, convert, process, fabricate, or manufacture recovered materials into products which are composed of at least 25 percent recovered materials, such term including, but not being limited to, power generation and pollution control machinery and equipment.

(6) "Recycling manufacturing facility" means any facility, including land, improvements to land, buildings, building improvements, and any recycling machinery and equipment used in the recycling process resulting in the manufacture of products from recovered materials, provided that up to 10 percent of any building that is a component of a recycling facility may be used for office space to house support staff for the recycling operation.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility in this state in a tier 2 county designated pursuant to Code Section 48-7-40, there shall be allowed a credit against the tax imposed under this article in an amount equal to 3 percent of the cost of all qualified investment property purchased or acquired by the taxpayer in such year, subject to the conditions and limitations set forth in this Code section. In the event such qualified investment property purchased or acquired by the taxpayer in such year consists of recycling machinery or equipment, a recycling manufacturing facility, pollution control or prevention machinery or equipment, a pollution control or prevention facility, or the conversion from defense to domestic production, the amount of such credit shall be equal to 5 percent.

(c) The credit granted under subsection (b) of this Code section shall be subject to the following conditions and limitations:

(1) In order to qualify as a basis for the credit, the investment in qualified investment property must occur no sooner than January 1, 1995. The credit may be taken beginning with the tax year immedi-

ately following the tax year in which the qualified investment property having an aggregate cost in excess of \$50,000.00 is purchased or acquired by the taxpayer. For every year in which a taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's Georgia income tax return which will set forth the following information, as a minimum:

- (A) A description of the project;
- (B) The amount of qualified investment property acquired during the taxable year;
- (C) The amount of tax credit claimed for the taxable year;
- (D) The amount of qualified investment property acquired in prior taxable years;
- (E) Any tax credit utilized by the taxpayer in prior taxable years;
- (F) The amount of tax credit carried over from prior years;
- (G) The amount of tax credit utilized by the taxpayer in the current taxable year; and
- (H) The amount of tax credit to be carried over to subsequent tax years;

(2) Any credit claimed under this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified investment property was acquired, provided that such qualified investment property remains in service. The credit established by this Code section taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year. The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility in any succeeding taxpayer, but any unused credit may be transferred and continued by any transferee of the taxpayer;

(3) In the initial year in which the taxpayer claims the credit granted in subsection (b) of this Code section, the taxpayer shall include in the description of the project required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the project includes the acquisition of qualified investment property having an aggregate cost in excess of \$50,000.00;

(4) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing or telecommunications facility which would otherwise constitute qualified investment property shall be treated as the purchase or acquisi-

tion of qualified investment property by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the taxable year in which the lease becomes binding on the lessor and the taxpayer if all other conditions of this subsection have been met; and

(5) The utilization of the credit granted in subsection (b) of this Code section shall have no effect on the taxpayer's ability to claim depreciation for tax purposes on the assets acquired by the taxpayer, nor shall the credit have any effect on the taxpayer's basis in such assets for the purpose of depreciation.

(d) No taxpayer shall be authorized to claim on a tax return for a given project the credit provided for in this Code section if such taxpayer claims on such tax return any of the credits authorized under Code Section 48-7-40 or 48-7-40.1. (Code 1981, § 48-7-40.3, enacted by Ga. L. 1994, p. 928, § 4; Ga. L. 1995, p. 585, § 3; Ga. L. 1997, p. 461, § 4; Ga. L. 1998, p. 1224, § 4.)

Editor's notes. — Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provides that the 1994 amendment shall be applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that the 1995 amendment shall be applicable to all taxable years beginning on or after January 1, 1995.

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that the 1997 amendment shall be applicable to all taxable years beginning on or after January 1, 1997.

48-7-40.4. Tax credits for existing manufacturing and telecommunications facilities or manufacturing and telecommunications support facilities in tier 3 or 4 counties; conditions and limitations.

(a) As used in this Code section, the term:

(1) "Product" means a marketable product or component of a product which has an economic value to the wholesale or retail consumer and is ready to be used without further alteration of its form or a product or material which is marketed as a prepared material or is a component in the manufacturing and assembly of other finished products.

(2) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements,

buildings, building improvements, and machinery and equipment to be used in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this paragraph.

(3) "Recovered materials" means those materials, including but not limited to such materials as aluminum, oil, plastic, paper, paper products, scrap metal, iron, glass, and rubber, which have known use, reuse, or recycling potential; can be feasibly used, reused, or recycled; and have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing.

(4) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

(5) "Recycling machinery and equipment" means all tangible personal property used, directly or indirectly, to sort, store, prepare, convert, process, fabricate, or manufacture recovered materials into products which are composed of at least 25 percent recovered materials, such term including, but not being limited to, power generation and pollution control machinery and equipment.

(6) "Recycling manufacturing facility" means any facility, including land, improvements to land, buildings, building improvements, and any recycling machinery and equipment used in the recycling process resulting in the manufacture of products from recovered materials, provided that up to 10 percent of any building that is a component of a recycling facility may be used for office space to house support staff for the recycling operation.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility in this state in a tier 3 or a tier 4 county designated pursuant to Code Section 48-7-40, there shall be allowed a credit against the tax imposed under this article in an amount equal to 1 percent of the cost of all qualified investment property purchased or acquired by the taxpayer in such year, subject to the conditions and limitations set forth in this Code section. In the event such qualified investment property purchased or acquired by the taxpayer in such year consists of recycling machinery or equipment, a recycling manufacturing facility, pollution control or prevention machinery or equipment, a pollution control or prevention facility, or the conversion from defense to domestic production, the amount of such credit shall be equal to 3 percent.

(c) The credit granted under subsection (b) of this Code section shall be subject to the following conditions and limitations:

(1) In order to qualify as a basis for the credit, the investment in qualified investment property must occur no sooner than January 1, 1995. The credit may be taken beginning with the tax year immediately following the tax year in which the qualified investment property having an aggregate cost in excess of \$50,000.00 is purchased or acquired by the taxpayer. For every year in which a taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's Georgia income tax return which will set forth the following information, as a minimum:

- (A) A description of the project;
- (B) The amount of qualified investment property acquired during the taxable year;
- (C) The amount of tax credit claimed for the taxable year;
- (D) The amount of qualified investment property acquired in prior taxable years;
- (E) Any tax credit utilized by the taxpayer in prior taxable years;
- (F) The amount of tax credit carried over from prior years;
- (G) The amount of tax credit utilized by the taxpayer in the current taxable year; and
- (H) The amount of tax credit to be carried over to subsequent tax years;

(2) Any credit claimed under this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified investment property was acquired, provided that such qualified investment property remains in service. The credit established by this Code section taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year. The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility in any succeeding taxpayer, but any unused credit may be transferred and continued by any transferee of the taxpayer;

(3) In the initial year in which the taxpayer claims the credit granted in subsection (b) of this Code section, the taxpayer shall include in the description of the project required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the project includes the acquisition of qualified investment property having an aggregate cost in excess of \$50,000.00;

(4) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing or telecommunications facility which would otherwise constitute qualified investment property shall be treated as the purchase or acquisition of qualified investment property by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the taxable year in which the lease becomes binding on the lessor and the taxpayer if all other conditions of this subsection have been met; and

(5) The utilization of the credit granted in subsection (b) of this Code section shall have no effect on the taxpayer's ability to claim depreciation for tax purposes on the assets acquired by the taxpayer nor shall the credit have any effect on the taxpayer's basis in such assets for the purpose of depreciation.

(d) No taxpayer shall be authorized to claim on a tax return for a given project the credit provided for in this Code section if such taxpayer claims on such tax return any of the credits authorized under Code Section 48-7-40 or 48-7-40.1. (Code 1981, § 48-7-40.4, enacted by Ga. L. 1994, p. 928, § 4; Ga. L. 1995, p. 585, § 4; Ga. L. 1997, p. 461, § 5; Ga. L. 1998, p. 1224, § 5; Ga. L. 2000, p. 605, § 3.)

Editor's notes. — Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provides that the 1994 amendment shall be applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that the 1995 amendment shall be applicable to all

taxable years beginning on or after January 1, 1995.

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that the 1997 amendment shall be applicable to all taxable years beginning on or after January 1, 1997.

Ga. L. 2000, p. 605, § 7, not codified by the General Assembly, provides that the 2000 amendment shall be applicable to all taxable years beginning on or after January 1, 2001.

48-7-40.5. Tax credits for employers providing approved retraining programs.

(a) As used in this Code section, the term:

(1) "Approved retraining" means employer provided or employer sponsored retraining that meets the following conditions:

(A) It enhances the functional skills of employees otherwise unable to function effectively on the job due to skill deficiencies or who would otherwise be displaced because such skill deficiencies would inhibit their utilization of new technology; provided, however, that approved retraining shall not include any retraining on commercially, mass produced software packages for word process-

ing, data base management, presentations, spreadsheets, e-mail, personal information management, or computer operating systems except a retraining tax credit shall be allowable for those providing support or training on such software;

(B) It is approved and certified by the Technical College System of Georgia; and

(C) The employer does not require the employee to make any payment for the retraining, either directly or indirectly through use of forfeiture of leave time, vacation time, or other compensable time.

(2) "Cost of retraining" means direct instructional costs as defined by the Technical College System of Georgia including instructor salaries, materials, supplies, and textbooks but specifically excluding costs associated with renting or otherwise securing space.

(3) "Employee" means any employee resident in this state who is employed for at least 25 hours a week and who has been continuously employed by the employer for at least 16 consecutive weeks.

(4) "Employer" means any employer upon whom an income tax is imposed by this chapter.

(5) "Employer provided" refers to approved retraining offered on the premises of the employer or on premises approved by the Technical College System of Georgia by instructors hired by or employed by an employer.

(6) "Employer sponsored" refers to a contractual arrangement with a school, university, college, or other instructional facility which offers approved retraining that is paid for by the employer.

(b) A tax credit shall be granted to an employer who provides or sponsors one or more approved retraining programs in a taxable year. The total amount of the tax credit allowed per full-time employee shall be equal to one-half of the costs of retraining per full-time employee, or \$500.00 per full-time employee, whichever is less, for each employee who has successfully completed an approved retraining program; provided, however, that in no event shall the amount of the tax credit authorized under this subsection exceed \$1,250.00 per year per full-time employee who has successfully completed more than one approved retraining program. No employer shall receive a credit if the employer requires that the employee reimburse or pay the employer for the cost of retraining.

(c) Any tax credit claimed under this Code section for any taxable year beginning on or after January 1, 1998, but not used for any such taxable year may be carried forward for ten years from the close of the

taxable year in which the tax credit was granted. The tax credit granted to any employer pursuant to this Code section shall not exceed 50 percent of the amount of the taxpayer's income tax liability for the taxable year as computed without regard to this Code section. Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section shall be claimed within one year of the earlier of the date the original return was filed or the date such return was due as prescribed in subsection (a) of Code Section 48-7-56, including any approved extensions.

(d) To be eligible to claim the credit granted under this Code section, the employer shall certify to the department the name of the employee, the course work successfully completed by such employee, the name of the provider of the approved retraining, and such other information as may be required by the department to ensure that credits are only granted to employers who provide or sponsor approved retraining pursuant to this Code section and that such credits are only granted to employers with respect to employees who successfully complete such approved retraining. The department shall adopt rules and regulations and forms to implement this credit program. The department is expressly authorized and directed to work with the Technical College System of Georgia to ensure the proper granting of credits pursuant to this Code section.

(e) The Technical College System of Georgia is expressly authorized and directed to establish such standards as it deems necessary and convenient in approving employer provided and employer sponsored retraining programs. In establishing such standards, the Technical College System of Georgia shall establish required hours of classroom instruction, required courses, certification of teachers or instructors, progressive levels of instruction, and standardized measures of employee evaluation to determine successful completion of a course of study. (Code 1981, § 48-7-40.5, enacted by Ga. L. 1994, p. 928, § 4; Ga. L. 1995, p. 585, § 5; Ga. L. 1996, p. 220, § 6; Ga. L. 1998, p. 1224, § 6; Ga. L. 2008, p. 335, § 9/SB 435; Ga. L. 2009, p. 654, § 3/HB 439.)

Editor's notes. — Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provides that the 1994 amendment shall be applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that the 1995 amendment shall be applicable to all

taxable years beginning on or after January 1, 1995.

Ga. L. 1996, p. 220, § 11, not codified by the General Assembly, provides that the 1996 amendment shall be applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 1998, p. 1224, § 8, not codified by the General Assembly, provides that the 1998 amendment shall be applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 2009, p. 654, § 7/HB 439, not

codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable for all

taxable years beginning on or after January 1, 2009.

48-7-40.6. Tax credits for employers providing child care.

(a) As used in this Code section, the term:

(1) “Cost of operation” means reasonable direct operational costs incurred by an employer as a result of providing employer provided or employer sponsored child care facilities; provided, however, that the term cost of operation shall exclude the cost of any property that is qualified child care property.

(2) “Employer” means any employer upon whom an income tax is imposed by this article.

(3) “Employer provided” refers to child care offered on the premises of the employer.

(4) “Employer sponsored” refers to a contractual arrangement with a child care facility that is paid for by the employer.

(5) “Premises of the employer” refers to any location within the State of Georgia and located on the workplace premises of the employer providing the child care or one of the employers providing the child care in the event that the child care property is owned jointly or severally by the taxpayer and one or more employers; provided, however, that if such workplace premises are impracticable or otherwise unsuitable for the on-site location of such child care facility, as determined by the commissioner, such facility may be located within a reasonable distance of the premises of the employer.

(6) “Qualified child care property” means all real property and tangible personal property purchased or acquired on or after July 1, 1999, or which property is first placed in service on or after July 1, 1999, for use exclusively in the construction, expansion, improvement, or operation of an employer provided child care facility, but only if:

(A) The facility is licensed or commissioned by the Department of Early Care and Learning pursuant to Chapter 1A of Title 20;

(B) At least 95 percent of the children who use the facility are children of employees of:

(i) The taxpayer and other employers in the event that the child care property is owned jointly or severally by the taxpayer and one or more employers; or

(ii) A corporation that is a member of the taxpayer’s “affiliated group” within the meaning of Section 1504(a) of the Internal Revenue Code; and

(C) The taxpayer has not previously claimed any tax credit for the cost of operation for such qualified child care property placed in service prior to taxable years beginning on or after January 1, 2000.

Qualified child care property includes, but is not limited to, amounts expended on land acquisition, improvements, buildings, and building improvements and furniture, fixtures, and equipment.

(7) "Recapture amount" means, with respect to property as to which a recapture event has occurred, an amount equal to the applicable recapture percentage of the aggregate credits claimed under subsection (d) of this Code section for all taxable years preceding the recapture year, whether or not such credits were used.

(8) "Recapture event" refers to any disposition of qualified child care property by the taxpayer, or any other event or circumstance under which property ceases to be qualified child care property with respect to the taxpayer, except for:

- (A) Any transfer by reason of death;
- (B) Any transfer between spouses or incident to divorce;
- (C) Any transaction to which Section 381(a) of the Internal Revenue Code applies;
- (D) Any change in the form of conducting the taxpayer's trade or business so long as the property is retained in such trade or business as qualified child care property and the taxpayer retains a substantial interest in such trade or business; or
- (E) Any accident or casualty.

(9) "Recapture percentage" refers to the applicable percentage set forth in the following table:

<u>If the recapture event occurs within—</u>	<u>The recapture percentage is:</u>
Five full years after the qualified child care property is placed in service.....	100
The sixth full year after the qualified child care property is placed in service.....	90
The seventh full year after the qualified child care property is placed in service.....	80
The eighth full year after the qualified child care property is placed in service.....	70
The ninth full year after the qualified child care property is placed in service.....	60

The tenth full year after the qualified child care property is placed in service..... 50

The eleventh full year after the qualified child care property is placed in service..... 40

The twelfth full year after the qualified child care property is placed in service..... 30

The thirteenth full year after the qualified child care property is placed in service..... 20

The fourteenth full year after the qualified child care property is placed in service..... 10

Any period after the close of the fourteenth full year after the qualified child care property is placed in service..... 0

(10) “Recapture year” means the taxable year in which a recapture event occurs with respect to qualified child care property.

(b) A tax credit against the tax imposed under this article shall be granted to an employer who provides or sponsors child care for employees. The amount of the tax credit shall be equal to 75 percent of the cost of operation to the employer less any amounts paid for by employees during a taxable year.

(c) The tax credit allowed under subsection (b) of this Code section shall be subject to the following conditions and limitations:

(1) Such credit shall not exceed 50 percent of the amount of the taxpayer’s income tax liability for the taxable year as computed without regard to any other credits;

(2) Any such credit claimed but not used in any taxable year may be carried forward for five years from the close of the taxable year in which the cost of operation was incurred; and

(3) The employer shall certify to the department the names of the employees, the name of the child care provider, and such other information as may be required by the department to ensure that credits are granted only to employers who provide or sponsor approved child care pursuant to this Code section.

(d) In addition to the tax credit provided under subsection (b) of this Code section, a taxpayer shall be allowed a credit against the tax imposed under this article for the taxable year in which the taxpayer first places in service qualified child care property and for each of the ensuing nine taxable years following such taxable year. The aggregate amount of the credit shall equal 100 percent of the cost of all qualified child care property purchased or acquired by the taxpayer and first

placed in service during a taxable year, and such credit may be claimed at a rate of 10 percent per year over a period of ten taxable years.

(e) The tax credit allowable under subsection (d) of this Code section shall be subject to the following conditions and limitations:

(1) Any such credit claimed in any taxable year but not used in such taxable year may be carried forward for three years from the close of such taxable year. The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding taxpayer;

(2) In no event shall the amount of any such tax credit, including any carryover of such credit from a prior taxable year, exceed 50 percent of the taxpayer's income tax liability as determined without regard to any other credits; and

(3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a schedule to the taxpayer's Georgia income tax return setting forth the following information with respect to such tax credit:

(A) A description of the child care facility;

(B) The amount of qualified child care property acquired during the taxable year and the cost of such property;

(C) The amount of tax credit claimed for the taxable year;

(D) The amount of qualified child care property acquired in prior taxable years and the cost of such property;

(E) Any tax credit utilized by the taxpayer in prior taxable years;

(F) The amount of tax credit carried over from prior years;

(G) The amount of tax credit utilized by the taxpayer in the current taxable year;

(H) The amount of tax credit to be carried forward to subsequent tax years; and

(I) A description of any recapture event occurring during the taxable year, a calculation of the resulting reduction in tax credits allowable for the recapture year and future taxable years, and a calculation of the resulting increase in tax for the recapture year.

(f) If a recapture event occurs with respect to qualified child care property:

(1) The credit otherwise allowable under subsection (d) of this Code section with respect to such property for the recapture year and

all subsequent taxable years shall be reduced by the applicable recapture percentage; and

(2) All credits previously claimed with respect to such property under subsection (d) of this Code section shall be recaptured as follows:

(A) Any carryover attributable to such credits under paragraph (1) of subsection (e) of this Code section shall be reduced, but not below zero, by the recapture amount;

(B) The tax credit otherwise allowable under subsection (d) of this Code section for the recapture year, if any, as reduced under paragraph (1) of this subsection, shall be further reduced, but not below zero, by the excess of the recapture amount over the amount taken into account under subparagraph (A) of this paragraph; and

(C) The tax imposed under this article for the recapture year shall be increased by the excess of the recapture amount over the amounts taken into account under subparagraphs (A) and (B) of this paragraph, as applicable.

(g) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-40.6, enacted by Ga. L. 1994, p. 928, § 4; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 585, § 6; Ga. L. 1999, p. 13, § 3; Ga. L. 2004, p. 645, § 6.)

Editor's notes. — Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Business Expansion Support Act of 1994.'"

Ga. L. 1994, p. 928, § 8, not codified by the General Assembly, provides that the 1994 amendment shall be applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that the 1995 amendment shall be applicable to all taxable years beginning on or after January 1, 1995.

Ga. L. 1999, p. 13, § 4, not codified by the General Assembly, provides that the 1999 amendment shall be applicable to all taxable years beginning on or after January 1, 2000.

48-7-40.7. Optional tax credits for existing manufacturing and telecommunications facilities in tier 1 counties; conditions and limitations.

(a) As used in this Code section, the term:

(1) "Machinery and equipment" means all tangible personal property used, directly or indirectly, to move, sort, store, prepare, convert, process, fabricate, or manufacture products.

(2) "Product" means a marketable product or component of a product which has an economic value to the wholesale or retail consumer and is ready to be used without further alteration of its

form or a product or material which is marketed as a prepared material or is a component in the manufacturing and assembly of other finished products.

(3) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used exclusively in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this paragraph.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility and which first places in service during a taxable year qualified investment property in this state in a tier 1 county designated pursuant to Code Section 48-7-40, there shall be allowed an optional credit against the tax imposed under this article for the ensuing ten taxable years following the taxable year the qualified investment property was first placed in service, provided that such qualified investment property remains in service. Such optional credit shall be at the irrevocable election of the taxpayer and shall be in lieu of the credit under Code Section 48-7-40.2. No taxpayer who claims the credit under Code Section 48-7-40.2 for any taxable year for a given project shall be eligible to receive the credit under this Code section with respect to the same project for any taxable year. The aggregate amount of the credit allowed under this Code section shall equal 10 percent of the cost of all qualified investment property purchased or acquired by the taxpayer and first placed in service during a taxable year. The annual amount of such credit shall be computed as follows:

(1) The taxable year in which such qualified investment property is first placed in service shall be the base year for purposes of calculating the credit provided for by this Code section;

(2) The amount of tax owed by the taxpayer for the base year and for each of the two immediately preceding taxable years shall be determined without regard to any credits and shall be added together and divided by three. The resulting figure shall be the base year average; and

(3) The credit available to the taxpayer to apply against the tax liability of any year following the base year but no later than the tenth year shall be the lesser of the following amounts:

(A) Ninety percent of the excess of the tax of the applicable year determined without regard to any credits over the base year average; or

(B) The excess of the aggregate amount of the credit allowed for the qualified investment property over the sum of the amounts of credit already used in the years following the base year.

(c) The credit granted under subsection (b) of this Code section shall be subject to the following conditions and limitations:

(1) In order to qualify as a basis for the credit, the qualified investment property must be first placed in service no sooner than January 1, 1996. The credit may only be taken with respect to qualified investment property having an aggregate cost in excess of \$5 million. For every year in which a taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's Georgia income tax return which will set forth the following information, as a minimum:

(A) A description of the project;

(B) The amount of qualified investment property placed in service during the taxable year;

(C) The base year average calculated under paragraph (2) of subsection (b) of this Code section;

(D) The tax owed by the taxpayer for the current taxable year determined without regard to any credits;

(E) The amount of the unused credit available at the end of the prior tax year;

(F) The amount of tax credit utilized by the taxpayer in the current taxable year; and

(G) The amount of tax credit remaining for subsequent tax years;

(2) In the initial year in which the taxpayer claims the credit granted in subsection (b) of this Code section, the taxpayer shall include in the description of the project required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the project includes the placing in service of qualified investment property having an aggregate cost in excess of \$5 million;

(3) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing or telecommunications facility which would otherwise constitute qualified investment property shall be treated as the purchase or acquisition of qualified investment property by the lessee. The taxpayer may treat the full value of the leased property as qualified investment

property in the taxable year in which the lease becomes binding on the lessor and the taxpayer if all other conditions of this subsection have been met; and

(4) The utilization of the credit granted in subsection (b) of this Code section shall have no effect on the taxpayer's ability to claim depreciation for tax purposes on the assets acquired by the taxpayer nor shall the credit have any effect on the taxpayer's basis in such assets for the purpose of depreciation.

(d) No taxpayer shall be authorized to claim on a tax return for a given project the credit provided for in this Code section if such taxpayer claims on such tax return any of the credits authorized under Code Section 48-7-40 or 48-7-40.1. (Code 1981, § 48-7-40.7, enacted by Ga. L. 1995, p. 585, § 7; Ga. L. 1997, p. 461, § 6.)

Editor's notes. — Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that the 1997 amendment shall be applicable to all

taxable years beginning on or after January 1, 1997.

Administrative rules and regulations. — Optional investment tax credit, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, § 560-7-8-.40.

48-7-40.8. Optional tax credits for existing manufacturing and telecommunications facilities in tier 2 counties; conditions and limitations.

(a) As used in this Code section, the term:

(1) "Machinery and equipment" means all tangible personal property used, directly or indirectly, to move, sort, store, prepare, convert, process, fabricate, or manufacture products.

(2) "Product" means a marketable product or component of a product which has an economic value to the wholesale or retail consumer and is ready to be used without further alteration of its form or a product or material which is marketed as a prepared material or is a component in the manufacturing and assembly of other finished products.

(3) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used exclusively in the manufacturing or telecommunications

facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this paragraph.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility and which first places in service during a taxable year qualified investment property in this state in a tier 2 county designated pursuant to Code Section 48-7-40, there shall be allowed an optional credit against the tax imposed under this article for the ensuing ten taxable years following the taxable year the qualified investment property was first placed in service, provided that such qualified investment property remains in service. Such optional credit shall be at the irrevocable election of the taxpayer and shall be in lieu of the credit under Code Section 48-7-40.3. No taxpayer who claims the credit under Code Section 48-7-40.3 for any taxable year for a given project shall be eligible to receive the credit under this Code section with respect to the same project for any taxable year. The aggregate amount of the credit allowed under this Code section shall equal 8 percent of the cost of all qualified investment property purchased or acquired by the taxpayer and first placed in service during a taxable year. The annual amount of such credit shall be computed as follows:

(1) The taxable year in which such qualified investment property is first placed in service shall be the base year for purposes of calculating the credit provided for by this Code section;

(2) The amount of tax owed by the taxpayer for the base year and for each of the two immediately preceding taxable years shall be determined without regard to any credits and shall be added together and divided by three. The resulting figure shall be the base year average; and

(3) The credit available to the taxpayer to apply against the tax liability of any year following the base year but no later than the tenth year shall be the lesser of the following amounts:

(A) Ninety percent of the excess of the tax of the applicable year determined without regard to any credits over the base year average; or

(B) The excess of the aggregate amount of the credit allowed for the qualified investment property over the sum of the amounts of credit already used in the years following the base year.

(c) The credit granted under subsection (b) of this Code section shall be subject to the following conditions and limitations:

(1) In order to qualify as a basis for the credit, the qualified investment property must be first placed in service no sooner than

January 1, 1996. The credit may only be taken with respect to qualified investment property having an aggregate cost in excess of \$10 million. For every year in which a taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's Georgia income tax return which will set forth the following information, as a minimum:

(A) A description of the project;

(B) The amount of qualified investment property placed in service during the taxable year;

(C) The base year average calculated under paragraph (2) of subsection (b) of this Code section;

(D) The tax owed by the taxpayer for the current taxable year determined without regard to any credits;

(E) The amount of the unused credit available at the end of the prior tax year;

(F) The amount of tax credit utilized by the taxpayer in the current taxable year; and

(G) The amount of tax credit remaining for subsequent tax years;

(2) In the initial year in which the taxpayer claims the credit granted in subsection (b) of this Code section, the taxpayer shall include in the description of the project required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the project includes the placing in service of qualified investment property having an aggregate cost in excess of \$10 million;

(3) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing or telecommunications facility which would otherwise constitute qualified investment property shall be treated as the purchase or acquisition of qualified investment property by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the taxable year in which the lease becomes binding on the lessor and the taxpayer if all other conditions of this subsection have been met; and

(4) The utilization of the credit granted in subsection (b) of this Code section shall have no effect on the taxpayer's ability to claim depreciation for tax purposes on the assets acquired by the taxpayer nor shall the credit have any effect on the taxpayer's basis in such assets for the purpose of depreciation.

(d) No taxpayer shall be authorized to claim on a tax return for a given project the credit provided for in this Code section if such

taxpayer claims on such tax return any of the credits authorized under Code Section 48-7-40 or 48-7-40.1. (Code 1981, § 48-7-40.8, enacted by Ga. L. 1995, p. 585, § 7; Ga. L. 1997, p. 461, § 7.)

Editor's notes. — Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that the 1997 amendment shall be applicable to all taxable years beginning on or after January 1, 1997.

48-7-40.9. Optional tax credits for existing manufacturing and telecommunications facilities or manufacturing and telecommunications support facilities in tier 3 and 4 counties; conditions and limitations.

(a) As used in this Code section, the term:

(1) "Machinery and equipment" means all tangible personal property used, directly or indirectly, to move, sort, store, prepare, convert, process, fabricate, or manufacture products.

(2) "Product" means a marketable product or component of a product which has an economic value to the wholesale or retail consumer and is ready to be used without further alteration of its form or a product or material which is marketed as a prepared material or is a component in the manufacturing and assembly of other finished products.

(3) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used exclusively in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this paragraph.

(b) In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility or manufacturing or telecommunications support facility and which first places in service during a taxable year qualified investment property in this state in a tier 3 or a tier 4 county designated pursuant to Code Section 48-7-40, there shall be allowed an optional credit against the tax imposed under this article for the ensuing ten taxable years following the taxable year the qualified investment property was first placed in service, provided that such

qualified investment property remains in service. Such optional credit shall be at the irrevocable election of the taxpayer and shall be in lieu of the credit under Code Section 48-7-40.4. No taxpayer who claims the credit under Code Section 48-7-40.4 for any taxable year for a given project shall be eligible to receive the credit under this Code section with respect to the same project for any taxable year. The aggregate amount of the credit allowed under this Code section shall equal 6 percent of the cost of all qualified investment property purchased or acquired by the taxpayer and first placed in service during a taxable year. The annual amount of such credit shall be computed as follows:

- (1) The taxable year in which such qualified investment property is first placed in service shall be the base year for purposes of calculating the credit provided for by this Code section;
 - (2) The amount of tax owed by the taxpayer for the base year and for each of the two immediately preceding taxable years shall be determined without regard to any credits and shall be added together and divided by three. The resulting figure shall be the base year average; and
 - (3) The credit available to the taxpayer to apply against the tax liability of any year following the base year but no later than the tenth year shall be the lesser of the following amounts:
 - (A) Ninety percent of the excess of the tax of the applicable year determined without regard to any credits over the base year average; or
 - (B) The excess of the aggregate amount of the credit allowed for the qualified investment property over the sum of the amounts of credit already used in the years following the base year.
- (c) The credit granted under subsection (b) of this Code section shall be subject to the following conditions and limitations:
- (1) In order to qualify as a basis for the credit, the qualified investment property must be first placed in service no sooner than January 1, 1996. The credit may only be taken with respect to qualified investment property having an aggregate cost in excess of \$20 million. For every year in which a taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's Georgia income tax return which will set forth the following information, as a minimum:
 - (A) A description of the project;
 - (B) The amount of qualified investment property placed in service during the taxable year;
 - (C) The base year average calculated under paragraph (2) of subsection (b) of this Code section;

(D) The tax owed by the taxpayer for the current taxable year determined without regard to any credits;

(E) The amount of unused tax credit available at the end of the prior tax year;

(F) The amount of tax credit utilized by the taxpayer in the current taxable year; and

(G) The amount of tax credit remaining for subsequent tax years;

(2) In the initial year in which the taxpayer claims the credit granted in subsection (b) of this Code section, the taxpayer shall include in the description of the project required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the project includes the placing in service of qualified investment property having an aggregate cost in excess of \$20 million;

(3) Any lease for a period of five years or longer of any real or personal property used in a new or expanded manufacturing or telecommunications facility which would otherwise constitute qualified investment property shall be treated as the purchase or acquisition of qualified investment property by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the taxable year in which the lease becomes binding on the lessor and the taxpayer if all other conditions of this subsection have been met; and

(4) The utilization of the credit granted in subsection (b) of this Code section shall have no effect on the taxpayer's ability to claim depreciation for tax purposes on the assets acquired by the taxpayer, nor shall the credit have any effect on the taxpayer's basis in such assets for the purpose of depreciation.

(d) No taxpayer shall be authorized to claim on a tax return for a given project the credit provided for in this Code section if such taxpayer claims on such tax return any of the credits authorized under Code Section 48-7-40 or 48-7-40.1. (Code 1981, § 48-7-40.9, enacted by Ga. L. 1995, p. 585, § 7; Ga. L. 1997, p. 461, § 8; Ga. L. 2000, p. 605, § 4.)

Editor's notes. — Ga. L. 1995, p. 585, § 10, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 1996.

Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, provides that the 1997 amendment shall be applicable to all

taxable years beginning on or after January 1, 1997.

Ga. L. 2000, p. 605, § 7, not codified by the General Assembly, provides that the 2000 amendment shall be applicable to all taxable years beginning on or after January 1, 2001.

48-7-40.10. Tax credit for water conservation facilities and qualified water conservation investment property.

(a) As used in this Code section, the term:

(1) "Machinery and equipment" means all tangible personal property used directly in a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources.

(2) "Qualified water conservation investment" means all spending by a taxpayer for use in this state for the modification of existing manufacturing processes, for the construction of a new water conservation facility, or for the expansion of an existing water conservation facility provided that such modification, construction, or expansion results in a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources and has been certified pursuant to rules and regulations promulgated by the Department of Natural Resources as necessary to promote its ground-water management efforts for areas with a multiyear record of consumption at, near, or above sustainable use signaled by declines in ground-water pressure, threats of salt-water intrusion, need to develop alternate sources to accommodate economic growth and development, or any other indication of growing inadequacy of the existing resource.

(3) "Water conservation" means a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources due to increased efficiencies or recycling of water which results in reduced ground-water usage, or a change from a ground-water source to a surface-water source or an alternate source.

(4) "Water conservation facility" means any facility, buildings, and machinery and equipment used in the water conservation process resulting in a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing ground-water sources, provided that up to 10 percent of any building that is a component of a water conservation facility may be used for office space to house support staff for the operation.

(b) Any taxpayer who financially participates in qualified water conservation investment in this state shall be allowed a credit against the tax imposed under this article in the taxable year following that in which the modified manufacturing process or the new or expanded water conservation facility has been placed in service and in which the taxpayer has initiated a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from

existing permitted ground-water sources. This credit shall have a maximum carry forward of ten years, provided that such property remains in service, that the reduction in permit is maintained, and that the property continues to be used by the taxpayer. The amount of the credit allowed under this Code section shall be a percentage of the taxpayer's qualified water conservation investment. For projects of \$50,000.00 to \$499,999.00, the credit for such taxpayer shall be 10 percent; for projects of \$500,000.00 to \$799,999.00, the credit shall be 8 percent; for projects of \$800,000.00 to \$999,999.00, the credit shall be 6 percent; and for projects of \$1 million or more, the credit shall be 5 percent. The amount of the credit which may be used in any tax year shall not exceed 50 percent of that year's tax liability as determined without regard to any other credits.

(c) The credit granted under subsection (b) of this Code section shall be subject to the following conditions and limitations:

(1) In order to qualify as a basis for the credit, the modified manufacturing process or the new or expanded water conservation facility must not be placed in service before January 1, 1997. The credit may be only taken with respect to qualified water conservation investment in a project costing \$50,000.00 or more. For every year in which the taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's income tax return setting forth as a minimum the following information:

(A) The amounts, dates, and nature of the qualified water conservation investments which have allowed a modified manufacturing process or a new or expanded water conservation facility to be placed in service in the prior taxable year;

(B) The amount and date of reduction in permitted ground-water usage occurring as a result of this investment;

(C) The amount of tax credit claimed for these investments for the current taxable year;

(D) The amounts of qualified water conservation investment reported for tax years preceding the prior taxable year;

(E) The amounts of tax credit which have been utilized in prior taxable years;

(F) The amounts of tax credit which has been carried over from prior years;

(G) The amounts of tax credit allowed under this Code section being utilized by the taxpayer in the current taxable year; and

(H) The amounts of tax credit to be carried over to subsequent years;

(2) In the initial year in which the taxpayer claims the credit granted in subsection (b) of this Code section, the taxpayer shall include in the description of the project required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the project completed with the qualified water conservation investment had an aggregate cost of \$50,000.00 or more. The taxpayer shall also include a copy of the certification by the Department of Natural Resources under paragraph (2) of subsection (a) of this Code section;

(3) Any lease for a period of five years or longer of any real or personal property resulting from qualified water conservation investment shall be treated as qualified water conservation investment by the lessee. The taxpayer may treat the full value of the leased property as qualified water conservation investment in the taxable year in which the lease becomes binding on the lessor and the taxpayer if all other conditions of this subsection have been met;

(4) The utilization of the credit granted in this Code section shall have no effect on the taxpayer's ability to claim depreciation for tax purposes on assets acquired by the taxpayer, nor shall the credit have any effect on the taxpayer's basis in such assets for the purpose of depreciation; and

(5) If, after receiving approval for the water conservation credit, the annual permit for water usage from the same ground-water source is increased, any unused credits will expire immediately. (Code 1981, § 48-7-40.10, enacted by Ga. L. 1996, p. 1025, § 1; Ga. L. 2002, p. 415, § 48.)

Editor's notes. — Ga. L. 1996, p. 1025, § 3, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1997.

48-7-40.11. Tax credit for shift from ground-water usage.

(a) As used in this Code section, the term:

(1) "Qualified water conservation facility" means any facility including buildings, machinery, and equipment used in the water conservation process provided:

(A) The use of the facility results in reduced ground-water usage or utilizes a surface-water source; and

(B) The use of the facility has been certified by the Department of Natural Resources as necessary to promote its ground-water management efforts for areas with a multiyear record of consumption at, near, or above sustainable use signaled by declines in ground-water pressure, threats of salt-water intrusion, need to

develop alternate sources to accommodate economic growth and development, or any other indication of growing inadequacy of the existing resource.

(2) "Shift from ground-water usage" means a minimum 10 percent transfer of annual permitted ground-water usage from ground-water sources due to the purchase of water from a qualified water conservation facility.

(b) In the case of a taxpayer which first shifts from ground-water usage during a taxable year, there shall be allowed an annual credit against the tax imposed under this article starting in the fourth taxable year following the taxable year in which the shift from ground-water usage occurs. The amount of the credit shall be computed as follows:

(1) The amount of the credit allowed under this Code section shall be \$.0001 per gallon of the total gallons of relinquished and transferred annual ground-water permit issued after July 1, 1996; and

(2) The amount of the credit which may be used in any tax year shall not exceed 50 percent of that year's tax liability as determined without regard to other credits.

(c) The credit granted under this Code section shall be subject to the following conditions and limitations:

(1) For every year in which the taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's income tax return setting forth as a minimum the following information:

(A) The ground-water usage permitted the taxpayer in the first permit issued after July 1, 1996;

(B) The ground-water usage permitted the taxpayer in the tax year four years earlier than the current tax year;

(C) The ground-water usage permitted the taxpayer in the current year; and

(D) The credit utilized by the taxpayer in the current year;

(2) In the initial year in which the taxpayer claims the credit granted in subsection (b) of this Code section, the taxpayer shall include a copy of the certification by the Department of Natural Resources under subparagraph (a)(1)(B) of this Code section; and

(3) If, after receiving approval for the water conservation credit, the annual permit for water usage from the same ground-water source is increased, eligibility to use such credits shall expire immediately. (Code 1981, § 48-7-40.11, enacted by Ga. L. 1996, p. 1025, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2005, p. 60, § 48/HB 95.)

Editor's notes. — Ga. L. 1996, p. 1025, taxable years beginning on or after January 1, 1997.
§ 3, not codified by the General Assembly, makes this Code section applicable to all

48-7-40.12. Tax credit for qualified research expenses.

(a) As used in this Code section, the term:

(1) "Base amount" means the product of a business enterprise's Georgia gross receipts in the current taxable year and the average of the ratios of its aggregate qualified research expenses to Georgia gross receipts for the preceding three taxable years or 0.300, whichever is less; provided, however, that a business enterprise need not have had a positive taxable net income for the preceding three taxable years in order to claim the credit provided in this Code section. For purposes of this paragraph, "Georgia gross receipts" shall be the numerator of the gross receipts factor provided in subsection (d) of Code Section 48-7-31.

(2) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. "Broadcasting" is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(3) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, and research and development industries. Such term shall not include retail businesses.

(4) "Qualified research expenses" means qualified research expenses for any business enterprise as that term is defined in Section 41 of the Internal Revenue Code of 1986, as amended, except that all wages paid and all purchases of services and supplies must be for research conducted within the State of Georgia.

(b) A tax credit is allowed a business enterprise which has qualified research expenses in Georgia in a taxable year exceeding a base amount, provided that the business enterprise for the same taxable year claims and is allowed a research credit under Section 41 of the Internal Revenue Code of 1986, as amended.

(c) The tax credit provided in subsection (b) of this Code section shall be 10 percent of the excess over the base amount referred to in said subsection.

(d) Any unused credit claimed under this Code section may be carried forward ten years from the close of the taxable year in which the qualified research expenses were made. The credit taken in any one taxable year shall not exceed 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied.

(e) Where the amount of a credit claimed under this Code section exceeds 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 shall receive a credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the taxpayer.

(f) Any credit earned under this Code section in any taxable year beginning before January 1, 2012, and any credit carryforward attributable thereto, shall be governed by this Code section as in effect for the taxable year in which such credit was earned, including, but not limited to, when determining whether such credit or any credit carryforward may be taken as a credit against the taxpayer's quarterly or monthly payments under Code Section 48-7-103. (Code 1981, § 48-7-40.12, enacted by Ga. L. 1997, p. 461, § 9; Ga. L. 1998, p. 128, § 48; Ga. L. 2008, p. 874, § 3/HB 1246; Ga. L. 2009, p. 654, § 4/HB 439; Ga. L. 2012, p. 1309, § 3/HB 868; Ga. L. 2013, p. 7, § 3/HB 266.)

The 2012 amendment, effective May 3, 2012, in subsection (e), in the first sentence, substituted "Where the amount" for "In the first five years of a newly formed business enterprise's operations in this state, where the amount", and substituted "the business enterprise's remaining Georgia net income tax liability after all other credits have been applied" for "a taxpayer's liability for such taxes". See editor's note for applicability.

The 2013 amendment, effective March 5, 2013, added subsection (f). See editor's note for applicability.

Editor's notes. — Ga. L. 1997, p. 461, § 10, not codified by the General Assembly, makes this Code section applicable to

all taxable years beginning on or after January 1, 1998.

Ga. L. 2008, p. 874, § 9/HB 1246, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2009, p. 654, § 7/HB 439, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable for all taxable years beginning on or after January 1, 2009.

Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment

shall be applicable to all taxable years beginning on or after January 1, 2013.

Ga. L. 2013, p. 7, § 7(b)/HB 266, not codified by the General Assembly, provides, in part, that the 2013 amendment shall be applicable to all taxable years beginning on or after January 1, 2012.

Administrative rules and regula-

tions. — Tax credit for qualified research expenses, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, § 560-7-8-.42.

Law reviews. — For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005).

JUDICIAL DECISIONS

Trial court erred in finding invalid a regulation which interpreted a research tax credit codified in a statute; the regulation's requirement that a business enterprise have a positive state taxable net income for each of the preceding three years in order to be eligible for the tax credit was authorized by statute and was reasonable because the regulation reflected the legislature's intent that re-

search activities be increased, which was most likely to occur when a business enterprise was able to generate income through the enterprise's activities rather than when a business had a negative income or, in other words, a net operating loss. Ga. Dep't of Revenue v. Ga. Chemistry Council, Inc., 270 Ga. App. 615, 607 S.E.2d 207 (2004).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state taxes on revenues and

income from communications satellite services, 51 ALR6th 257.

48-7-40.13. "Business enterprise" defined; tax credit.

Reserved. Repealed by Ga. L. 2005, p. 1125, § 1/HB 539, effective May 9, 2005.

Editor's notes. — This Code section was based on Code 1981, § 48-7-40.13, enacted by Ga. L. 1997, p. 461, § 9.

48-7-40.14. Calculation of new full-time jobs.

Notwithstanding any provision to the contrary of Code Sections 48-7-40 and 48-7-40.1, business enterprises may make a one-time election to calculate new full-time jobs on a calendar year rather than a taxable year basis for all jobs created during calendar year 1994 and thereafter as compared against the preceding calendar year. Such one-time election may be made by claiming job tax credits in connection with any 1995 state income tax return or amended return that is filed after April 29, 1997. Such election will not change the taxable year of the business enterprise. (Code 1981, § 48-7-40.14, enacted by Ga. L. 1997, p. 1344, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, this Code

section, enacted as Code Section 48-7-40.12, was redesignated as Code Sec-

tion 48-7-40.14 and “April 29, 1997” was substituted for “the effective date of this Code section” in the second sentence.

48-7-40.15. Alternative tax credits for base year port traffic increases; conditions and limitations.

(a) As used in this Code section, the term:

(1) “Base year port traffic” means:

(A) For taxable years beginning prior to January 1, 2010, the total amount of net tons, containers, or twenty-foot equivalent units (TEU’s) of product actually transported by way of a waterborne ship or vehicle through a port facility during the period from January 1, 1997, through December 31, 1997; provided, however, that in the event the total amount actually transported during such period was not at least 75 net tons, five containers, or ten twenty-foot equivalent units (TEU’s), then “base year port traffic” means 75 net tons, five containers, or ten twenty-foot equivalent units (TEU’s).

(B) For all taxable years beginning on or after January 1, 2010, the total amount of net tons, containers, or twenty-foot equivalent units (TEU’s) of product actually imported into this state or exported out of this state by way of a waterborne ship or vehicle through a port facility during the second preceding 12 month period; provided, however, that in the event the total amount actually imported into this state or exported out of this state during such period was not at least 75 net tons, five containers, or ten twenty-foot equivalent units (TEU’s), then “base year port traffic” means 75 net tons, five containers, or ten twenty-foot equivalent units (TEU’s).

(2) “Broadcasting” means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. “Broadcasting” is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(3) “Business enterprise” means any business or the headquarters of any such business which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle

enterprises, warehousing and distribution, processing, telecommunications, broadcasting, tourism, biomedical manufacturing, and research and development industries. Such term shall not include retail businesses. Businesses are eligible for the tax credit provided by subsection (b) of this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term “establishment” means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

(4) “Port facility” means any privately owned or publicly owned facility located within this state through which product is transported by way of a waterborne ship or vehicle to or from destinations outside this state.

(5) “Port traffic” means:

(A) For taxable years beginning prior to January 1, 2010, the total amount of net tons, containers, or twenty-foot equivalent units (TEU’s) of product transported by way of a waterborne ship or vehicle through a port facility.

(B) For all taxable years beginning on or after January 1, 2010, the total amount of net tons, containers, or twenty-foot equivalent units (TEU’s) of product imported into this state or exported out of this state by way of a waterborne ship or vehicle through a port facility.

(6) “Product” means a marketable product or component of a product which has an economic value to the wholesale or retail consumer and is ready to be used without further alteration of its form or a product or material which is marketed as a prepared material or is a component in the manufacturing and assembly of other finished products.

(7) “Qualified investment property” means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or in the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, moneys expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this Code section.

(b)(1) In the case of any business enterprise which has increased its port traffic of products during the previous 12 month period by more than 10 percent above its base year port traffic and is qualified to claim a job tax credit under Code Section 48-7-40 or 48-7-40.1 for jobs added at any time on or after January 1, 1998, there shall be allowed an additional \$1,250.00 job tax credit against the tax imposed under this article.

(2) The tax credit described in this subsection shall be allowed subject to the conditions and limitations set forth in Code Section 48-7-40 or 48-7-40.1 and shall be in addition to the credit allowed under Code Section 48-7-40 or 48-7-40.1; provided, however, that such credit shall not be allowed during a year if the port traffic does not remain above the minimum level established in this Code section.

(c) In the case of any business enterprise which has increased its port traffic of products during the previous 12 month period by more than 10 percent above its base year port traffic and is qualified to claim a tax credit under Code Section 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, or 48-7-40.9 upon qualified investment property added at any time on or after January 1, 1998, there shall be allowed a credit against the tax imposed under this article in an amount equal to the applicable percentage amount otherwise allowed under Code Section 48-7-40.2 or 48-7-40.7 to business enterprises for the cost of such property. The tax credit described in this subsection shall be allowed subject to the conditions and limitations set forth in Code Section 48-7-40.2 or 48-7-40.7, as applicable, except that such property may be placed in service in any county without regard to its tier designation. Such credit shall also be in lieu of and not in addition to the credit authorized under Code Sections 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9.

(d) No business enterprise shall be authorized to claim the credits provided for in both subsections (b) and (c) of this Code section on a tax return for any taxable year unless such business enterprise has increased its port traffic of products during the previous 12 month period by more than 20 percent above its base year port traffic, has increased employment by 400 or more no sooner than January 1, 1998, and has purchased or acquired qualified investment property having an aggregate cost in excess of \$20 million no sooner than January 1, 1998.

(e) The credit granted under this Code section shall be subject to the following conditions and limitations:

(1) For every year in which a taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's state income tax return which shall set forth the following information, as a minimum, in addition to the information required under Code Sections 48-7-40, 48-7-40.1, and 48-7-40.2 or 48-7-40.7:

(A) A description of how the base year port traffic and the increase in port traffic was determined;

(B) The amount of the base year port traffic;

(C) The amount of the increase in port traffic for the taxable year, including information which demonstrates an increase in port traffic in excess of the minimum amount required to claim the tax credit under this Code section;

(D) Any tax credit utilized by the taxpayer in prior years;

(E) The amount of tax credit carried over from prior years;

(F) The amount of tax credit utilized by the taxpayer in the current taxable year; and

(G) The amount of tax credit to be carried over to subsequent tax years.

(2)(A) Any tax credit claimed under subsection (b) of this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified jobs were established, provided that the increase in port traffic remains above the minimum levels established in Code Section 48-7-40 or 48-7-40.1 and this Code section, respectively.

(B) Any tax credit claimed under subsection (c) of this Code section in lieu of Code Section 48-7-40.2, 48-7-40.3, or 48-7-40.4 but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified investment property was acquired, provided that the increase in port traffic remains above the minimum level established in this Code section and the qualified investment property remains in service.

(3)(A) Any tax credit claimed under subsection (c) of this Code section in lieu of Code Section 48-7-40.7, 48-7-40.8, or 48-7-40.9 shall be allowed for the ensuing ten taxable years following the taxable year the qualified investment property was first placed in service, provided that the increase in port traffic remains above the minimum level established in this Code section and the qualified investment property remains in service.

(B) The tax credit established by this Code section in lieu of Code Section 48-7-40.2, 48-7-40.3, or 48-7-40.4 and taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

(C) The tax credit established by this Code section in addition to that pursuant to Code Section 48-7-40 or 48-7-40.1 and taken in

any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

(D) The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for any succeeding taxpayer, but any unused credit may be transferred and continued by any transferee of the taxpayer. (Code 1981, § 48-7-40.15, enacted by Ga. L. 1998, p. 744, § 1; Ga. L. 1998, p. 1224, § 7; Ga. L. 2000, p. 605, § 5; Ga. L. 2001, p. 855, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2005, p. 159, § 16/HB 488; Ga. L. 2008, p. 874, § 4/HB 1246; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 654, § 5/HB 439; Ga. L. 2012, p. 1309, § 4/HB 868.)

The 2012 amendment, effective May 3, 2012, substituted "519, Internet publishing and broadcasting" for "516, Internet publishing and broadcasting" in paragraph (a)(2); substituted the present provisions of paragraph (a)(3) for the former provisions, which read: "Business enterprise' means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, and research and development industries but shall not include retail businesses."; inserted "that" near the middle of paragraph (b)(2); inserted "or 48-7-40.1" in paragraphs (b)(1) and (b)(2), and subparagraphs (e)(2)(A) and (e)(3)(C); and inserted ", 48-7-40.1," in paragraph (e)(1). See editor's note for applicability.

Editor's notes. — Ga. L. 1998, p. 1224, § 8, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 2000, p. 605, § 7, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2001, p. 855, § 2, not codified by

the General Assembly, provides that this Act "shall be applicable to all taxable years beginning on or after January 1, 2001."

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2008, p. 874, § 9/HB 1246, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2009, p. 654, § 7/HB 439, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable for all taxable years beginning on or after January 1, 2009.

Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Law reviews. — For review of 1998 legislation relating to revenue and taxation, see 15 Ga. St. U.L. Rev. 224 (1998).

48-7-40.15A. Additional job tax credit based on increase in port traffic; conditions and limitations.

(a) As used in this Code section, the term:

(1) "Base year port traffic" means the total amount of net tons, containers, or twenty-foot equivalent units (TEU's) of product actu-

ally imported into this state or exported out of this state by way of a waterborne ship or vehicle through a port facility during the period from January 1, 1997, through December 31, 1997; provided, however, that in the event the total amount actually imported into this state or exported out of this state during such period was not at least 75 net tons, five containers, or ten twenty-foot equivalent units (TEU's), then "base year port traffic" means 75 net tons, five containers, or ten twenty-foot equivalent units (TEU's).

(2) "Business enterprise" means any business located in a tier 2 or tier 3 county established pursuant to Code Section 48-7-40 and in a less developed area established pursuant to Code Section 48-7-40.1 and which qualifies and receives the tax credit under Code Section 48-7-40.1 and which:

(A) Consists of a distribution facility of greater than 650,000 square feet in operation in this state prior to December 31, 2008;

(B) Distributes product to retail stores owned by the same legal entity or its subsidiaries as such distribution facility; and

(C) Has a minimum of eight retail stores in this state in the first year of operations.

(3) "Port traffic" means the total amount of net tons, containers, or twenty-foot equivalent units (TEU's) of product imported into this state or exported out of this state by way of a waterborne ship or vehicle through a port facility.

(4) "Product" means a marketable product or component of a product which has an economic value to the wholesale or retail consumer and is ready to be used without further alteration of its form or a product or material which is marketed as a prepared material or is a component in the manufacturing and assembly of other finished products.

(b)(1) In the case of any business enterprise which has increased its port traffic of products during the previous 12 month period by more than 10 percent above its base year port traffic and is qualified to claim a job tax credit under Code Section 48-7-40 or 48-7-40.1 for jobs added at any time on or after January 1, 1998, there shall be allowed an additional \$1,250.00 job tax credit against the tax imposed under this article.

(2) The tax credit described in this subsection shall be allowed subject to the conditions and limitations set forth in Code Section 48-7-40 and shall be in addition to the credit allowed under Code Section 48-7-40; provided, however, that such credit shall not be allowed during a year if the port traffic does not remain above the minimum level established in this Code section.

(c) No business enterprise shall be authorized to claim the credits provided for in both subsection (b) of this Code section and subsection (b) of Code Section 48-7-40.15 on a tax return for any taxable year unless such business enterprise has increased its port traffic of products during the previous 12 month period by more than 20 percent above its base year port traffic and has increased employment by 400 or more no sooner than January 1, 1998.

(d)(1) The credit granted under this Code section shall be subject to the following conditions and limitations:

(2) For every year in which a taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's state income tax return which shall set forth the following information, as a minimum, in addition to the information required under Code Sections 48-7-40 and 48-7-40.2 or Code Section 48-7-40.7:

(A) A description of how the base year port traffic and the increase in port traffic were determined;

(B) The amount of the base year port traffic;

(C) The amount of the increase in port traffic for the taxable year, including information which demonstrates an increase in port traffic in excess of the minimum amount required to claim the tax credit under this Code section;

(D) Any tax credit utilized by the taxpayer in prior years;

(E) The amount of tax credit carried over from prior years;

(F) The amount of tax credit utilized by the taxpayer in the current taxable year; and

(G) The amount of tax credit to be carried over to subsequent tax years.

(3)(A) Any tax credit claimed under subsection (b) of this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified jobs were established, provided that the increase in port traffic remains above the minimum levels established in Code Section 48-7-40 and this Code section, respectively.

(B) The tax credit established by this Code section in lieu of Code Section 48-7-40.2, 48-7-40.3, or 48-7-40.4 and taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

(C) The tax credit established by this Code section in addition to that pursuant to Code Section 48-7-40 and taken in any one taxable

year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

(D) The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for any succeeding taxpayer, but any unused credit may be transferred and continued by any transferee of the taxpayer.

(e) No tax credit may be claimed and allowed pursuant to this Code section for any jobs created on or after January 1, 2015. (Code 1981, § 48-7-40.15A, enacted by Ga. L. 2009, p. 816, § 7/HB 485; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in this Code section.

§ 1/HB 485, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Improved Taxpayer Customer Service Act of 2009.'"

Editor's notes. — Ga. L. 2009, p. 816,

48-7-40.16. Income tax credits for low-emission vehicles.

(a) As used in this Code section, the term:

(1) "Alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal derived liquid fuels; fuels other than alcohol derived from biological materials; and electricity, including electricity from solar energy.

(2) "Clean fueled vehicle" means a motor vehicle which has been certified by the Environmental Protection Agency to meet, for any model year, a set of emission standards that classifies it as a low-emission vehicle or zero emission vehicle.

(3) "Conventionally fueled vehicle" means a motor vehicle which is fueled solely by a petroleum based fuel such as gasoline or diesel.

(4) "Converted vehicle" means a motor vehicle that is retrofitted so that it is fueled solely by an alternative fuel and which meets the emission standards set forth for that class of low-emission vehicles as defined under rules and regulations of the Board of Natural Resources applicable to clean fueled vehicles, as amended, when operating on such alternative fuel, or which meets the emission standards set forth for zero emission vehicles as defined under rules and regulations of the Board of Natural Resources.

(5) "Low-emission vehicle" means a motor vehicle which is fueled solely by an alternative fuel and which meets emission standards as

defined under rules and regulations of the Board of Natural Resources applicable to clean fueled vehicles classified as low-emission vehicles, as amended, when operating on such alternative fuel.

(6) "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway that is registered by the Department of Revenue, except vehicles that are defined as "low-speed vehicles" in paragraph (25.1) of Code Section 40-1-1.

(7) "Zero emission vehicle" means a motor vehicle which has zero tailpipe and evaporative emissions as defined under rules and regulations of the Board of Natural Resources applicable to clean fueled vehicles, as amended, and shall include an electric vehicle whose drive train is powered solely by electricity, provided said electricity is not provided by any on-board combustion device.

(b) A tax credit is allowed against the tax imposed under this article to a taxpayer for the purchase or lease of a new low-emission vehicle or zero emission vehicle that is registered in the State of Georgia. The amount of the credit shall be:

(1) For any new low-emission vehicle, 10 percent of the cost of such vehicle or \$2,500.00, whichever is less; and

(2) For any new zero emission vehicle, 20 percent of the cost of such vehicle or \$5,000.00, whichever is less.

(c) A tax credit is allowed against the tax imposed under this article to a taxpayer for the conversion of a conventionally fueled vehicle to a converted vehicle that is registered in the State of Georgia. The amount of the credit shall be equal to 10 percent of the cost of conversion, not to exceed \$2,500.00 per converted vehicle.

(d) A tax credit is allowed against the tax imposed under this article to any business enterprise for the purchase or lease of each electric vehicle charger that is located in the State of Georgia. The amount of the credit shall be 10 percent of the cost of the charger or \$2,500.00, whichever is less.

(e) The credits granted under this Code section shall be subject to the following conditions and limitations:

(1) All claims for any credit provided by subsection (b) of this Code section shall be:

(A) Accompanied by a certification approved by the Environmental Protection Division of the Department of Natural Resources; and

(B) Made only by a taxpayer who is the owner of a new clean fueled vehicle, as evidenced by the certificate of title issued for such

vehicle; provided, however, that if a new clean fueled vehicle is leased to a taxpayer at retail, the taxpayer who is the lessee shall be entitled to claim the credit; provided, further, that only one taxpayer shall be eligible to claim any credit provided by subsection (b) of this Code section;

(2) All claims for any credit provided by subsection (c) of this Code section must be accompanied by a certification issued by the Environmental Protection Division of the Department of Natural Resources;

(3) All claims for any credit provided by subsection (d) of this Code section shall be:

(A) Accompanied by a certification issued by the seller where the new electric vehicle charger was purchased or leased; and

(B) Made only by a taxpayer who is the ultimate purchaser or lessee of a new electric vehicle charger at retail;

(4) Any credit claimed under this Code section but not used in any taxable year may be carried forward for five years from the close of the taxable year in which a new clean fueled vehicle was purchased or leased or a conventionally fueled vehicle was changed into a converted vehicle, provided that the applicable certification required in paragraph (1) or (2) of this subsection accompanies any such claim;

(5) In no event shall the amount of any tax credit provided in this Code section exceed the taxpayer's income tax liability; and

(6) Tax credits authorized in this Code section shall be granted to a taxpayer who purchased or leased and placed in service in Georgia a new low-emission vehicle or zero emission vehicle, which also is a low-speed vehicle, but only if such low-speed vehicle was placed in service during the taxable year ending December 31, 2001. For purposes of this paragraph, the term "low-speed vehicle" means a low-speed vehicle as defined in paragraph (25.1) of Code Section 40-1-1. Any claim for such credit must be accompanied by a manufacturer's statement of origin issued to a dealer registered in Georgia which certifies that the low-speed vehicle was manufactured in compliance with those federal motor vehicle safety standards set forth in 49 C.F.R. Section 571.500 and in effect on January 1, 2001, as well as any other documentation deemed necessary by the commissioner to establish the date that delivery was made and such vehicle was placed in service. A taxpayer shall only be eligible to claim such credit with respect to a single low-speed vehicle.

(f) The state revenue commissioner shall be authorized to adopt rules and regulations to provide for the administration of any tax credit provided by this Code section.

(g) The Board of Natural Resources shall be authorized to adopt rules and regulations to provide for:

(1) The specific standards and requirements for low-emission vehicles, zero emission vehicles, and converted vehicles and electric vehicle chargers which shall be consistent with the terms of this Code section;

(2) An approved certification form which certifies the purchase or lease of a new clean fueled vehicle that is qualified for a tax credit provided by this Code section;

(3) The certification of any converted vehicle that is qualified to claim a tax credit provided by this Code section; and

(4) An approved certification form which shall be issued by the seller which certifies the purchase or lease of a new electric vehicle charger that is qualified for a tax credit provided by this Code section. (Code 1981, § 48-7-40.16, enacted by Ga. L. 1998, p. 1576, § 1; Ga. L. 2000, p. 1090, § 1; Ga. L. 2001, p. 109, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 506, § 1; Ga. L. 2002, p. 512, §§ 14, 15; Ga. L. 2003, p. 665, § 6; Ga. L. 2005, p. 334, § 29-5/HB 501.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, Code Section 48-7-40.15 as enacted by Ga. L. 1998, p. 1576, § 1, was redesignated as Code Section 48-7-40.16.

The amendment of this Code section by Ga. L. 2002, p. 415, § 48, and Ga. L. 2002, p. 506, § 1, irreconcilably conflicted with and were treated as superseded by Ga. L. 2002, p. 512, § 15. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Editor's notes. — Ga. L. 1998, p. 1576, § 2, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 2000, p. 1090, § 3, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2001, p. 109, § 2, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2003, p. 665, § 47(b), not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2003.

Law reviews. — For note on the 2002 amendment of this chapter, see 19 Ga. St. U.L. Rev. 281 (2002). For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

48-7-40.17. Establishing or relocating quality jobs; tax credit.

(a) As used in this Code section, the term:

(1) "Average wage" means the average wage of the county in which a new quality job is located as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(2) "New quality job" means employment for an individual which:

(A) Is located in this state;

(B) Has a regular work week of 30 hours or more;

(C) Is not a job that is or was already located in Georgia regardless of which taxpayer the individual performed services for; and

(D) Pays at or above 110 percent of the average wage of the county in which it is located.

(b) A taxpayer establishing new quality jobs in this state or relocating quality jobs into this state which elects not to receive the tax credits provided for by Code Sections 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9 for such jobs and investments created by, arising from, related to, or connected in any way with the same project and, within one year of the first date on which the taxpayer pursuant to the provisions of Code Section 48-7-101 withholds wages for employees in this state and employs at least 50 persons in new quality jobs in this state, shall be allowed a credit for taxes imposed under this article:

(1) Equal to \$2,500.00 annually per eligible new quality job where the job pays 110 percent or more but less than 120 percent of the average wage of the county in which the new quality job is located;

(2) Equal to \$3,000.00 annually per eligible new quality job where the job pays 120 percent or more but less than 150 percent of the average wage of the county in which the new quality job is located;

(3) Equal to \$4,000.00 annually per eligible new quality job where the job pays 150 percent or more but less than 175 percent of the average wage of the county in which the new quality job is located;

(4) Equal to \$4,500.00 annually per eligible new quality job where the job pays 175 percent or more but less than 200 percent of the average wage of the county in which the new quality job is located; and

(5) Equal to \$5,000.00 annually per eligible new quality job where the job pays 200 percent or more of the average wage of the county in which the new quality job is located;

provided, however, that where the amount of such credit exceeds a taxpayer's liability for such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year the credit amounts in paragraphs (1) through (5) of this subsection for each new quality job when aggregated with the credit applied against

taxes under this article. Each employee whose employer receives credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 shall receive a credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the taxpayer. For each new quality job created, the credit established by this subsection may be taken for the first taxable year in which the new quality job is created and for the four immediately succeeding taxable years; provided, however, that such new quality jobs must be created within seven years from the close of the taxable year in which the taxpayer first becomes eligible for such credit. Credit shall not be allowed during a year if the net employment increase falls below the 50 new quality jobs required. Any credit received for years prior to the year in which the net employment increase falls below the 50 new quality jobs required shall not be affected except as provided in subsection (f) of this Code section. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the 50 new quality jobs required.

(c) The number of new quality jobs to which this Code section shall be applicable shall be determined by comparing the monthly average of new quality jobs subject to Georgia income tax withholding for the taxable year with the corresponding average for the prior taxable year.

(d) Any credit claimed under this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the new quality jobs were established.

(e) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section shall be claimed within one year of the earlier of the date the original return was filed or the date such return was due as prescribed in subsection (a) of Code Section 48-7-56, including any approved extensions.

(f) Taxpayers that initially claimed the credit under this Code section for any taxable year beginning before January 1, 2012, shall be governed, for purposes of all such credits claimed as well as any credits claimed in subsequent taxable years related to such initial claim, by this Code section as it was in effect for the taxable year in which the taxpayer made such initial claim.

(g) The state revenue commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-40.17, enacted by Ga. L. 2000, p. 605, § 6; Ga. L.

2001, p. 984, § 9; Ga. L. 2003, p. 665, § 7; Ga. L. 2009, p. 654, § 6/HB 439; Ga. L. 2012, p. 1309, § 5/HB 868.)

The 2012 amendment, effective May 3, 2012, added “and” at the end of subparagraph (a)(2)(C); substituted a period for “; and” at the end of subparagraph (a)(2)(D); deleted former subparagraph (a)(2)(E), which read: “Has no predetermined end date”; inserted “state revenue” in the proviso in the last sentence of paragraph (b)(5) and in subsection (g); deleted former subsection (f), which read: “If the taxpayer has failed to maintain a new quality job in a taxable year, the taxpayer shall forfeit the right to the credit claimed for such job in that year. For each year such new quality job is not maintained, a taxpayer that forfeits such right is therefore liable for all past taxes imposed by this article for that taxable year and all past payments under Code Section 48-7-103 for that taxable year that were foregone by the state as a result of the credits provided by this Code section; provided, however, that Code Section 48-2-40 shall not apply to any such forfeiture.”; redesignated former subsection (g) as present subsection (f); substituted “2012” for “2009” in subsection (f); redesignated former subsection (h) as present subsection (g); and inserted “state revenue” in subsection (g). See editor’s note for applicability.

Code Commission notes. — Ga. L. 2000, p. 605, § 6, Ga. L. 2000, p. 1090, § 2, and Ga. L. 2000, p. 1447, § 1 each enacted a Code Section 48-7-40.17. Pursuant to Code Section 28-9-5, in 2000, the Code section enacted by Ga. L. 2000, p. 1090, § 2 was redesignated as Code Sec-

tion 48-7-40.19, and the Code section enacted by Ga. L. 2000, p. 1447, § 1 was redesignated as Code Section 48-7-40.20.

Editor’s notes. — Ga. L. 2000, p. 605, § 7, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2001, p. 984, § 20, not codified by the General Assembly, provides that the 2001 amendment is applicable to all taxable years beginning on or after January 1, 2001.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2003.’”

Ga. L. 2003, p. 665, § 47(b), not codified by the General Assembly, provides that this Act shall apply to all taxable years beginning on or after January 1, 2003.

Ga. L. 2009, p. 654, § 7/HB 439, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable for all taxable years beginning on or after January 1, 2009.

Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 294 (2001). For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

48-7-40.18. Tax credit for businesses headquartered in state; full-time jobs.

(a) Any business enterprise, as defined in Code Section 48-7-40, executing an agreement pursuant to subsection (a) of Code Section 48-7-31.1 for purposes of paragraph (1) of subsection (d) of Code Section 48-7-31 shall be allowed, beginning in the taxable year in which it establishes its headquarters in this state or relocates its headquarters to this state, a tax credit calculated in the same amounts and under the same principles as the credit established by Code Section 48-7-40.17. Except as otherwise provided in this Code section, the credit estab-

lished by the Code section shall be subject to the same definitions, limitations, and carry-forward provisions as the credit established by Code Section 48-7-40.17; provided, however, that the term “headquarters” means the principal central administrative office of such business enterprise; and provided, further, that for the first taxable year in which it is claimed, all or part of the credit established by this Code section may be applied against taxes imposed under this article for the taxable year immediately preceding that taxable year by amendment to a return or returns for such year.

(b) The credit established by this Code section may be claimed by such business enterprise for new full-time jobs created in taxable years prior to the taxable year in which it establishes its headquarters in this state or relocates its headquarters to this state, where such jobs are in excess of those contained in such agreement and are located at such headquarters. Such jobs shall be deemed for purposes of such credit to have been created on the first day of the taxable year in which such business enterprise establishes its headquarters in this state or relocates its headquarters to this state. No credit in excess of \$25 million may be claimed pursuant to the terms of this subsection.

(c) The number of new full-time jobs to which this Code section shall be applicable shall be determined by comparing the monthly average of full-time jobs subject to Georgia income tax withholding for the taxable year with the corresponding average for the prior taxable year. (Code 1981, § 48-7-40.18, enacted by Ga. L. 2000, p. 1294, § 2; Ga. L. 2001, p. 4, § 48; Ga. L. 2002, p. 415, § 48; Ga. L. 2005, p. 60, § 48/HB 95.)

Editor’s notes. — Ga. L. 2000, p. 1294, § 3, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2001.

Administrative rules and regula-

tions. — Headquarters job tax credit, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, § 560-7-8-14.

48-7-40.19. Diesel particulate emission reduction technology equipment; tax credit.

(a) As used in this Code section, the term:

(1) “Commercial motor vehicle” means a motor vehicle designed or used to transport property and having a gross vehicle weight rating of 26,001 or more pounds.

(2) “Diesel particulate emission reduction technology equipment” means any equipment which meets standards adopted by the Georgia Regional Transportation Authority and which provides for heat, air conditioning, light, and communications for the driver’s compartment of a commercial motor vehicle which is parked at a truck stop, depot,

or other facility the use of which results in the engine being turned off with a corresponding reduction of particulate emissions from such vehicle's diesel engine.

(b) A tax credit against the tax imposed under this article shall be granted to any person who installs diesel particulate emission reduction technology equipment at any truck stop, depot, or other facility. The amount of the tax credit shall be equal to 10 percent of the total of the cost of the diesel particulate emission reduction technology equipment and the cost of installation of such equipment. The tax credit provided under this Code section shall be allowed for the taxable year in which the taxpayer first places the equipment in use. Any credit which is not used in the year in which the equipment is first placed in use shall not be carried forward to any future year.

(c) For every year for which the taxpayer claims the credit authorized by this Code section, the taxpayer shall attach a schedule to the taxpayer's Georgia income tax return setting forth the following information:

(1) A description of the diesel particulate emission reduction technology equipment installed;

(2) The location at which such equipment was installed; and

(3) The cost of the equipment and the cost of installation of the equipment.

(d) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-40.19, enacted by Ga. L. 2000, p. 1090, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, this Code section, enacted as Code Section 48-7-40.17, was redesignated as Code Section 48-7-40.19.

Editor's notes. — Ga. L. 2000, p. 1090, § 3, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2001.

48-7-40.20. Credit against taxes for businesses engaged in manufacturing cigarettes for exportation; amount; required information.

(a) As used in this Code section, the term:

(1) "Base year exportation volume" means the number of cigarettes manufactured and exported by a business enterprise during the calendar year 1999.

(2) "Business enterprise" means any business or the headquarters of any business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, tourism, and research

and development industries. Such term shall not include retail businesses.

(3) “Exportation” means the shipment of cigarettes manufactured in the United States to a foreign country sufficient to relieve the cigarettes in the shipment of the federal excise tax on cigarettes.

(b) A business enterprise engaged in the business of manufacturing cigarettes for exportation to a foreign country is allowed a credit against the taxes levied by this article. The amount of credit allowed under this Code section is determined by comparing the exportation volume of the corporation in the year for which the credit is claimed with the corporation’s base year exportation volume, rounded to the nearest whole percentage. The amount of credit allowed is as follows:

Current Year’s Exportation Volume Compared to its Base Year’s Exportation Volume	Amount of Credit per Thousand Cigarettes Exported
120 percent or more	40¢
119 percent — 100 percent	35¢
99 percent — 80 percent	30¢
79 percent — 60 percent	25¢
59 percent — 50 percent	20¢
Less than 50 percent	None

(c) The credit allowed under this Code section may not exceed the lesser of \$6 million or 50 percent of the amount of tax imposed by this article for the taxable year reduced by the sum of all other credits allowable, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of the credit allowed in any tax year, including carry forwards claimed by the taxpayer under this Code section for previous tax years. Any unused portion of a credit allowed in this Code section may be carried forward for the next succeeding five years.

(d) A business enterprise that claims the credit under this Code section must include the following with its tax return:

- (1) A statement of the base year exportation volume;
- (2) A statement of the exportation volume on which the credit is based; and
- (3) A list of the business enterprise’s export volumes shown on its monthly reports to the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury for the months in the tax year for which the credit is claimed. (Code 1981, § 48-7-40.20, enacted by Ga. L. 2000, p. 1447, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, this Code section, enacted as Code Section 48-7-40.17, was redesignated as Code Section 48-7-40.20.

Editor's notes. — Ga. L. 2000, p. 1447, § 2, not codified by the General Assembly,

provides that: "This Act shall be applicable to all taxable years beginning on or after January 1, 2000."

Ga. L. 2000, p. 1447, § 3, not codified by the General Assembly, provides that: "This Act shall be repealed for cigarettes exported on or after January 1, 2006."

48-7-40.21. Tax credits for existing business enterprises undergoing qualified business expansion; recapture; application of credit.

(a) As used in this Code section, the term:

(1) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. "Broadcasting" is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(2) "Existing business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, or research and development industries that has been in operation in this state for at least five years. Such term shall not include retail businesses.

(3) "Qualified business expansion" means the creation of at least 500 new full-time jobs within a taxable year.

(b) An existing business enterprise undergoing a qualified business expansion shall be eligible to make application to the commissioner to take tax credits established by Code Section 48-7-40 against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 subject to the following limitations:

(1) Such application may be made only where the amount of such credit exceeds 50 percent of an existing business enterprise's liability for taxes imposed under this article in a taxable year. In such cases where the existing business enterprise has claimed and not used credits established by Code Section 48-7-40 prior to April 4, 2001, and such credits have been carried forward pursuant to subsection (h) of Code Section 48-7-40, the taxpayer may also include in the application a request to take such credits against such taxpayer's quarterly or monthly payment under Code Section 48-7-103;

(2) Following the commissioner's referral of the application to a panel composed of the commissioner of community affairs, the commissioner of economic development, and the director of the Office of Planning and Budget, said panel, after reviewing the application, certifies that the expansion will have a beneficial economic effect on the region for which it is planned;

(3) The credit shall apply to not more than five taxable years;

(4) Credit shall not be allowed during a year if the net employment increase falls below the 500 new full-time jobs required; and

(5) No credit in excess of \$5 million may be claimed pursuant to the terms of this Code section.

(c) Notwithstanding any other provision of law to the contrary, any credit claimed pursuant to this Code section shall be subject to recapture if the minimum job requirement is not met.

(d) Each employee whose employer receives credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this Code section. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this Code section shall not constitute income to the taxpayer. (Code 1981, § 48-7-40.21, enacted by Ga. L. 2001, p. 105, § 2; Ga. L. 2002, p. 415, § 48; Ga. L. 2004, p. 690, § 19; Ga. L. 2008, p. 874, § 5/HB 1246; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "519, Internet publishing and broadcasting" for "516, Internet publishing and broadcasting" in paragraph (a)(1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, Code Section 48-7-40.21, as enacted by Ga. L. 2001, p. 984, § 10, was redesignated as Code Section 48-7-40.23.

Editor's notes. — Ga. L. 2001, p. 105, § 4, not codified by the General Assembly,

provides that this Code section is applicable to all taxable years ending on or after January 1, 2001.

Ga. L. 2008, p. 874, § 9/HB 1246, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Law reviews. — For note on the 2001 enactment of this Code section, see 18 Ga. St. U.L. Rev. 294 (2001).

48-7-40.22. Credit to business enterprises for leased motor vehicles; daily ridership; implementation.

(a) As used in this Code section, the term:

(1) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. "Broadcasting" is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 519, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(2) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, research and development industries, child care businesses, or retail businesses.

(3) "Headquarters" means the principal central administrative office of a taxpayer.

(4) "Tier" means a tier as designated pursuant to Code Section 48-7-40, as amended.

(b) A business enterprise which is located in a tier 1 or tier 2 county which purchases or leases a new motor vehicle as defined in paragraph (34) of Code Section 40-1-1 in this state which is used for the exclusive purpose of providing transportation for its employees shall be allowed a credit for taxes imposed under this article as follows:

<u>Tier</u>	<u>Credit amount per vehicle</u>
1	\$ 3,000.00
2	2000.00

(c) In order to qualify for the tax credit under this Code section, a business enterprise must certify that each vehicle for which a credit is claimed carries an average daily ridership of not less than four employees for an entire taxable year.

(d) In no event shall the aggregate amount of the tax credit provided by this Code section exceed the income tax liability of the business enterprise. Any unused tax credit shall be allowed to be carried forward to apply to the succeeding years' tax liability of such business enterprise. No such credit shall be allowed the business enterprise against prior years' tax liability.

(e) No business enterprise shall be authorized to claim on a tax return the credit provided for in this Code section with respect to a vehicle if such business enterprise claims any of the credits authorized

under subsection (b) of Code Section 48-7-40.16 with respect to such vehicle.

(f)(1) If a business enterprise sells a new motor vehicle within three years of receiving the credit, the business enterprise shall recapture the credit as follows:

(A) If the motor vehicle is sold within one year of receiving the credit, the recapture amount will equal the lesser of the credit or the net profit from the sale;

(B) If the motor vehicle is sold within two years of receiving the credit, the recapture amount will equal the lesser of two-thirds of the credit or the net profit from the sale; and

(C) If the motor vehicle is sold within three years of receiving the credit, the recapture amount will equal the lesser of one-third of the credit or the net profit from the sale.

(2) The recapture provisions of this subsection shall not apply to:

(A) Any sale by reason of death;

(B) Any sale between spouses or incident to divorce;

(C) Any transaction to which Section 381(a) of the Internal Revenue Code of 1986 applies;

(D) Any change in the form of conducting the taxpayer's trade or business so long as the property is retained in such trade or business and the taxpayer retains a substantial interest in such trade or business; or

(E) Any accident or casualty.

(g) The commissioner shall promulgate any rules and regulations necessary to implement and administer the Code section. (Code 1981, § 48-7-40.22, enacted by Ga. L. 2001, p. 105, § 3; Ga. L. 2002, p. 372, § 6; Ga. L. 2008, p. 874, § 6/HB 1246; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "519, Internet publishing and broadcasting" for "516, Internet publishing and broadcasting" in paragraph (a)(1).

Editor's notes. — Ga. L. 2001, p. 105, § 4, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2002, p. 372, § 15(b), not codified by the General Assembly, provides that §§ 1-4, 6, and 8-14 of this Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2008, p. 874, § 9/HB 1246, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

48-7-40.23. Election to count new jobs on calendar year basis.

Notwithstanding any provision to the contrary of Code Sections 48-7-40 and 48-7-40.1, business enterprises may apply to the commissioner to make a one-time election to calculate new full-time jobs on a calendar year rather than a taxable year basis for all jobs created during calendar year 2001. Such one-time election may be made by claiming job tax credits calculated on the basis set forth in Code Sections 48-7-40 and 48-7-40.1 in connection with any 2002 state income tax return filed after the effective date of this Code section. Such election will not change the taxable year of the business enterprise. (Code 1981, § 48-7-40.23, enacted by Ga. L. 2001, p. 984, § 10.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, Code Section 48-7-40.21, as enacted by Ga. L. 2001, p. 984, § 10, was redesignated as Code Section 48-7-40.23.

48-7-40.24. Conditions for taking job tax credit by business enterprises; calculating credit.

(a) As used in this Code section, the term:

(.1) “Affiliate” means the members of a business enterprise’s affiliated group within the meaning of Section 1504(a) of the Internal Revenue Code and also means any entity, notwithstanding its form of organization, that would otherwise qualify as a member of such affiliated group.

(1) “Business enterprise” or “taxpayer” means any enterprise or organization, whether corporation, partnership, limited liability company, proprietorship, association, trust, business trust, real estate trust, or other form of organization, and its affiliates, which are registered and authorized to use the federal employment verification system known as “E-Verify” or any successor federal employment verification system and are engaged in or carrying on any business activities within this state, except that such term shall not include retail businesses.

(2) “Eligible full-time employee” means an individual holding a full-time employee job created by a qualified project who:

(A) Possesses a valid Georgia driver’s license or identification card issued by the Department of Driver Services; or

(B) Submits a notarized affidavit swearing to be a United States citizen or lawfully present alien authorized to work in the United States.

(3) “Force majeure” means any:

(A) Explosions, implosions, fires, conflagrations, accidents, or contamination;

(B) Unusual and unforeseeable weather conditions such as floods, torrential rain, hail, tornadoes, hurricanes, lightning, or other natural calamities or acts of God;

(C) Acts of war (whether or not declared), carnage, blockade, or embargo;

(D) Acts of public enemy, acts or threats of terrorism or threats from terrorists, riot, public disorder, or violent demonstrations;

(E) Strikes or other labor disturbances; or

(F) Expropriation, requisition, confiscation, impoundment, seizure, nationalization, or compulsory acquisition of the site or sites of a qualified project or any part thereof;

but such term shall not include any event or circumstance that could have been prevented, overcome, or remedied in whole or in part by the taxpayer through the exercise of reasonable diligence and due care, nor shall such term include the unavailability of funds.

(4)(A) "Full-time employee job" and "full-time job" mean employment of an individual which:

(i) Is located in this state at the site or sites of a qualified project or the facility or facilities resulting therefrom;

(ii) Involves a regular work week of 35 hours or more;

(iii) Has no predetermined end date; and

(iv) Pays at or above the average wage of the county with the lowest average wage in the state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(B) For purposes of this paragraph:

(i) Leased employees shall be considered employees of the company using their services and such persons may be counted in determining the company's job tax credits under this Code section if their employment otherwise satisfies subparagraph (A) of this paragraph;

(ii) An individual's employment shall not be deemed to have a predetermined end date solely by virtue of a mandatory retirement age set forth in a company policy of general application. The employment of any individual in a bona fide executive, administrative, or professional capacity, within the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as

amended, 29 U.S.C. Section 213(a)(1), as such act existed on January 1, 2002, shall not be deemed to have a predetermined end date solely by virtue of the fact that such employment is pursuant to a fixed-term contract, provided that such contract is for a term of not less than one year; and

(iii) When there is a merger or acquisition of another company by a business enterprise whose application for a qualified project has been approved, the existing jobs in this state shall not be counted in calculating the job creation requirement and the credit calculation necessary to qualify for the tax credit under this Code section. Only additional jobs added in this state that meet the requirements of this Code section shall be counted for purposes of calculating the job creation requirement and the credit calculation.

(5) "Job creation requirement" means the requirement that no later than the close of the sixth taxable year following the withholding start date, the business enterprise will have a minimum of 1,800 eligible full-time employees. If at the close of the sixth taxable year following the withholding start date a minimum of \$600 million in qualified investment property has been purchased or acquired by the business enterprise to be used with respect to a qualified project, the job creation requirement shall be extended for an additional two-year period. If at the close of the eighth taxable year following the withholding start date a minimum of \$800 million in qualified investment property has been purchased or acquired by the business enterprise to be used with respect to a qualified project, the job creation requirement shall be extended for an additional four-year period after the sixth taxable year following the withholding start date.

(6) "Job maintenance requirement" means the requirement that, with respect to each year in the recapture period, the monthly average number of eligible full-time employees employed by the business enterprise, determined as prescribed by subsection (1) of this Code section, must equal or exceed 1,800.

(7) "Payroll maintenance requirement" means the requirement that, with respect to each year in the recapture period, the total annual Georgia W-2 reported payroll with respect to a qualified project must equal or exceed \$150 million.

(8) "Payroll requirement" means the requirement that no later than the close of the sixth taxable year following the withholding start date, the business enterprise will have a minimum of \$150 million in total annual Georgia W-2 reported payroll with respect to a qualified project.

(9) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in a qualified project, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and any personal property to be used in the facility or facilities.

(10) "Qualified investment property requirement" means the requirement that by the close of the sixth taxable year following the withholding start date, a minimum of \$450 million in qualified investment property will have been purchased or acquired by the business enterprise to be used with respect to a qualified project.

(11) "Qualified project" means a project which meets the job creation requirement and either the payroll requirement or qualified investment property requirement. If the taxpayer selects the qualified investment property requirement as one of the conditions for its project, the property shall involve the construction of one or more new facilities in this state or the expansion of one or more existing facilities in this state. For purposes of this paragraph, the term "facilities" means all facilities comprising a single project, including noncontiguous parcels of land, improvements to such land, buildings, building improvements, and any personal property that is used in the facility or facilities.

(12) "Recapture period" means the period of five consecutive taxable years that commences after the first taxable year in which a business enterprise has satisfied the job creation requirement and either the payroll requirement or the qualified investment property requirement, as selected by the taxpayer.

(13) "Withholding start date" means the date on which the business enterprise begins to withhold Georgia income tax from the wages of its employees located at the site or sites of a qualified project.

(b) A business enterprise that is planning a qualified project shall be allowed to take the job tax credit provided by this Code section under the following conditions:

(1) An application is filed with the commissioner that:

(A) Describes the qualified project to be undertaken by the business enterprise, including when such project will commence and the expected withholding start date;

(B) Certifies that such project will meet the job creation requirement and either the payroll requirement or the qualified investment property requirement prescribed by this Code section; and

(C) Certifies that during the recapture period applicable to such project the business enterprise will meet the job maintenance

requirement and, if applicable, the payroll maintenance requirement prescribed by this Code section;

(2) Following the commissioner's referral of the application to a panel composed of the commissioner of community affairs, the commissioner of economic development, and the director of the Office of Planning and Budget, the panel, after reviewing the application, certifies that the new or expanded facility or facilities will have a significant beneficial economic effect on the region for which they are planned. The panel shall make its determination within 30 days after receipt from the commissioner of the taxpayer's application and any necessary supporting documentation. Although the panel's certification may be based upon other criteria, a project that meets the minimum job creation requirement and either the payroll requirement or qualified investment property requirement, as applicable, specified in paragraph (1) of this subsection will have a significant beneficial economic effect on the region for which it is planned if one of the following additional criteria is met:

(A) The project will create new full-time employee jobs with average wages that are, as determined by the Department of Labor, for all jobs for the county in question:

(i) Twenty percent above such average wage for projects located in tier 1 counties;

(ii) Ten percent above such average wage for projects located in tier 2 counties; or

(iii) Five percent above such average wage for projects located in tier 3 or tier 4 counties; or

(B) The project demonstrates high growth potential based upon the prior year's Georgia net taxable income growth of over 20 percent from the previous year, if the taxpayer's Georgia net taxable income in each of the two preceding years also grew by 20 percent or more.

(c) Any lease for a period of five years or longer of any real or personal property used in a new or expanded facility or facilities which would otherwise constitute qualified investment property shall be treated as the purchase or acquisition thereof by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the year in which the lease becomes binding on the lessor and the taxpayer.

(d) A business enterprise whose application is approved shall be allowed a tax credit for taxes imposed under this article equal to \$5,250.00 annually per new eligible full-time employee job for five years beginning with the year in which such job is created through year five

after such creation; provided, however, that where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103. The taxpayer may file an election with the commissioner to take such credit against quarterly or monthly payments under Code Section 48-7-103 that become due before the due date of the income tax return on which such credit may be claimed. In the event of such an election, the commissioner shall confirm with the taxpayer a date, which shall not be later than 30 days after receipt of the taxpayer's election, when the taxpayer may begin to take the credit against such quarterly or monthly payments. For any one taxable year the amounts taken as a credit against taxes imposed under this article and against the business enterprise's quarterly or monthly payments under Code Section 48-7-103 may not in the aggregate exceed \$5,250.00 per eligible full-time employee job. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive a credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the taxpayer. To qualify for a credit under this subsection, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this subsection shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this subsection if such employer does not pay for all or any part of health insurance coverage for other employees.

(e) The number of new full-time jobs to which this Code section shall be applicable shall be determined by comparing the monthly average number of eligible full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period for the prior taxable year.

(f) Subject to the requirements of division (a)(4)(B)(iii) of this Code section, the sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise.

(g) To qualify for the credit provided by this Code section, a new full-time job must be created by the close of the seventh taxable year following the business enterprise's withholding start date, unless the

purchase or acquisition of qualified investment property is made as provided in paragraph (5) of subsection (a) of this Code section, in which case a new full-time job must be created by the close of the eighth taxable year following the business enterprise's withholding start date based on a \$600 million qualified investment or the end of the tenth taxable year based on an \$800 million qualified investment. In no event may a credit be claimed under this Code section for more than 4,500 new full-time employee jobs created by any one project; provided, however, that the taxpayer may claim the credits provided by Code Sections 48-7-40 and 48-7-40.1 for any such additional jobs if the taxpayer meets the terms and conditions thereof.

(h) Any credit claimed under this Code section but not fully used in the manner prescribed in subsection (d) of this Code section may be carried forward for ten years from the close of the taxable year in which the qualified job was established.

(i) Except as provided in subsection (g) of this Code section, a taxpayer who is entitled to and takes credits provided by this Code section for a qualified project shall not be allowed to take any of the credits authorized by Code Section 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.6, 48-7-40.7, 48-7-40.8, 48-7-40.9, 48-7-40.10, 48-7-40.11, 48-7-40.15, 48-7-40.17, or 48-7-40.18 for jobs, investments, child care, or ground-water usage shifts created by, arising from, related to, or connected in any way with the same project. Provided such taxpayer otherwise qualifies, such taxpayer may take any credit authorized by Code Section 48-7-40.5 for the costs of retraining an employee located at the site or sites of such project or the facility or facilities resulting therefrom, but only for costs incurred more than five years after the date the facility or facilities first become operational.

(j) Except under those circumstances described in subsection (k) of this Code section, the taxpayer shall, not more than 60 days after the close of the sixth taxable year following its withholding start date, file a report with the commissioner concerning the number of eligible full-time employee jobs created by such project; the wages of such jobs; the qualified investment property purchased or acquired by the taxpayer for the project; and any other information that the commissioner may reasonably require in order to determine whether the taxpayer has met the job creation requirement and either the payroll requirement or the qualified investment property requirement, as selected by the taxpayer, for such project. If the taxpayer has failed to meet any applicable job creation, payroll, or qualified investment property requirement, the taxpayer shall forfeit the right to claim any credits provided by this Code section for such project. A taxpayer that forfeits the right to claim such credits is liable for all past taxes imposed by this

article and all past payments under Code Section 48-7-103 that were foregone by the state as a result of the credits, plus interest at the rate established by Code Section 48-2-40 computed from the date such taxes or payments would have been due if the credits had not been taken. No later than 90 days after notification from the commissioner that any applicable job creation, payroll, or qualified investment property requirement was not met, the taxpayer shall file amended income tax and withholding tax returns for all affected periods that recalculate those liabilities without regard to the forfeited credits and shall pay any additional amounts shown on such returns, with interest as provided by Code Section 48-2-40. On such amended returns the taxpayer may claim any credit to which it would have been entitled under this article but for having taken the credit provided by this Code section.

(k) If the recapture period applicable to a qualified project begins with or before the sixth taxable year following the taxpayer's withholding start date, or with or before the eighth taxable year following the taxpayer's withholding start date if the project falls within the \$600 million in qualified investment property category, or within the tenth taxable year following the taxpayer's withholding start date if the project falls within the \$800 million in qualified investment property category, the taxpayer shall, not later than 60 days after the close of the taxable year immediately preceding the recapture period, file a report with the commissioner concerning the number of eligible full-time employee jobs created by such project; the wages of such jobs; the qualified investment property purchased or acquired by the taxpayer for the project; and any other information that the commissioner may reasonably require in order to verify that the taxpayer met the job creation requirement and either the payroll requirement or the qualified investment property requirement in such preceding year.

(l) Not more than 60 days after the close of each taxable year within the recapture period, the taxpayer shall file a report, using such form and providing such information as the commissioner may reasonably require, concerning whether it met the job maintenance requirement and, if applicable, the payroll maintenance requirement for such year. For purposes of this subsection, whether such job maintenance requirement has been satisfied shall be determined by comparing the monthly average number of eligible full-time employees subject to Georgia income tax withholding for the taxable year with 1,800. For purposes of this subsection, whether such payroll maintenance requirement has been satisfied shall be determined by comparing the total annual Georgia W-2 reported payroll with respect to a qualified project for the taxable year with \$150 million. If the taxpayer has failed to meet the job maintenance requirement or payroll maintenance requirement, or both, for such year, the taxpayer shall forfeit the right to 20 percent of all credits provided by this Code section for such project. A taxpayer

that forfeits such right is liable for 20 percent of all past taxes imposed by this article and all past payments under Code Section 48-7-103 that were foregone by the state as a result of the credits provided by this Code section, plus interest at the rate established by Code Section 48-2-40 computed from the date such taxes or payments would have been due if the credits had not been taken. No later than 90 days after notification by the commissioner that the taxpayer has failed to meet the job maintenance requirement or payroll maintenance requirement, or both, for such year, the taxpayer shall file amended income tax and withholding tax returns for all affected periods that recalculate those liabilities without regard to the forfeited credits and shall pay any additional amounts shown on such returns, with interest as provided by Code Section 48-2-40.

(m) A taxpayer that fails to meet the job maintenance requirement or payroll maintenance requirement, or both, for any taxable year within the recapture period because of force majeure may petition the commissioner for relief from such requirement. Such a petition must be made with and at the same time as the report required by subsection (l) of this Code section. If the commissioner determines that force majeure materially affected the taxpayer's ability to meet the job maintenance requirement or payroll maintenance requirement, or both, for such year, but that the portion of the year so affected was six months or less, for purposes of the job maintenance requirement the commissioner shall calculate the taxpayer's monthly average number of eligible full-time employees for purposes of subsection (l) of this Code section by disregarding the affected months and for purposes of the payroll maintenance requirement the commissioner shall annualize the total Georgia W-2 reported payroll with respect to a qualified project for the portion of the year not so affected. If the commissioner determines that the affected portion of the year was more than six months, the taxable year shall be disregarded in its entirety for purposes of the job maintenance requirement or payroll maintenance requirement, or both, and the recapture period applicable to the qualified project shall be extended for an additional year.

(n) Unless more time is allowed therefor by Code Section 48-7-82 or 48-2-49, the commissioner may make any assessment attributable to the forfeiture of credits claimed under this Code section for the periods covered by any amended returns filed by a taxpayer pursuant to subsection (j) or (l) of this Code section within one year from the date such returns are filed. If the taxpayer fails to file the reports or any amended return required by subsection (j) or (l) of this Code section, the commissioner may assess additional tax or other amounts attributable to the forfeiture of credits claimed under this Code section at any time.

(o) Projects certified by the panel pursuant to paragraph (2) of subsection (b) of this Code section before January 1, 2009, shall be

governed by this Code section as it was in effect for the taxable year the project was certified.

(p) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-40.24, enacted by Ga. L. 2003, p. 665, § 8; Ga. L. 2004, p. 690, § 20; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2009, p. 806, § 1/HB 438; Ga. L. 2012, p. 976, § 1/HB 1027; Ga. L. 2012, p. 1309, § 6/HB 868; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2012 amendments. — The first 2012 amendment, effective May 2, 2012, added paragraph (a)(1); and, in paragraph (a)(1), twice substituted “are” for “is”, inserted “or ‘taxpayer’” near the beginning, and inserted “, and its affiliates,” near the middle. See editor’s note for applicability. The second 2012 amendment, effective May 3, 2012, in subsection (a), deleted “Georgia” preceding “Department of Driver Services” in subparagraph (a)(2)(A); redesignated paragraph (a)(4) as subparagraph (a)(4)(A), and, in subparagraph (a)(4)(A), substituted “mean” for “means”; redesignated former subparagraphs (a)(4)(A) through (a)(4)(D) as divisions (a)(4)(A)(i) through (a)(4)(A)(iv), respectively; designated the previously undesignated provisions as subparagraph (a)(4)(B); in subparagraph (a)(4)(B), substituted “paragraph:” for “paragraph,”; in division (a)(4)(B)(i), substituted “Leased employees shall” for “leased employees will”, and substituted “satisfies subparagraph (A) of this paragraph” for “meets the definition of full-time job contained herein.”; in division (a)(4)(B)(ii), substituted “An individual’s” for “In addition, an individual’s”, substituted “; and” for a period at the end; added division (a)(4)(B)(iii); and added the second and third sentences of paragraph (a)(5); in subsection (b), substituted “the panel” for “said panel” in the first sentence of paragraph (b)(2); substituted “Subject to the requirements of division (a)(4)(B)(iii) of this Code section, the” for “The” in subsection (f); added the language beginning “, unless the purchase” and ending “qualified investment” in subsection (g); in subsection (j), substituted “taxpayer shall” for “taxpayer will” in the second sentence and substituted “by Code Section 48-2-40” for “herein” at the end of the next-to-last

sentence of subsection (j); added the language beginning “, or with or before” and ending “property category,” in subsection (k); in subsection (l), substituted “taxpayer shall” for “taxpayer will” in the fourth sentence and substituted “by Code Section 48-2-40” for “herein” at the end of the last sentence; and substituted “taxpayer that” for “taxpayer who” in the first sentence of in subsection (m). See editor’s note for applicability.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in subsection (n).

Editor’s notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2003.’”

Ga. L. 2003, p. 665, § 47(b), not codified by the General Assembly, provides that this Act shall be applicable to all taxable years beginning on or after January 1, 2003.

Ga. L. 2009, p. 806, § 2/HB 438, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2009.

Ga. L. 2012, p. 976, § 3(b)/HB 1027, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to all tax years beginning on or after January 1, 2012.

Ga. L. 2012, p. 1309, § 7/HB 868, not codified by the General Assembly, provides, in part, that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2013.

Law reviews. — For note on the 2003 enactment of this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

RESEARCH REFERENCES

ALR. — State income tax treatment of intangible holding companies, 11 ALR6th 543.

48-7-40.25. Conditions for credit for business enterprises with existing manufacturing facilities; calculating credit.

(a) As used in this Code section, the term:

(1) “Business enterprise” means any business or the headquarters of any such business which is engaged in manufacturing. Such term shall not include retail businesses.

(2) “Force majeure” means any:

(A) Explosions, implosions, fire, conflagrations, accidents, or contamination;

(B) Unusual and unforeseeable weather conditions such as floods, torrential rain, hail, tornadoes, hurricanes, lightning, or other natural calamities or acts of God;

(C) Acts of war (whether or not declared), carnage, blockade, or embargo;

(D) Acts of public enemy, acts or threats of terrorism or threats from terrorists, riot, public disorder, or violent demonstrations;

(E) Strikes or other labor disturbances; or

(F) Expropriation, requisition, confiscation, impoundment, seizure, nationalization, or compulsory acquisition of the site of a qualified project or any part thereof;

but such term shall not include any event or circumstance that could have been prevented, overcome, or remedied in whole or in part by the taxpayer through the exercise of reasonable diligence and due care, nor shall such term include the unavailability of funds.

(3) “Full-time employee” means an individual holding a full-time employee job.

(4) “Full-time employee job” and “full-time job” mean employment of an individual which:

(A) Is located in this state at the manufacturing facility resulting from a qualified project;

(B) Involves a regular work week of 35 hours or more;

(C) Has no predetermined end date; and

(D) Pays at or above the average wage of the county with the lowest average wage in the state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

For purposes of this paragraph, leased employees will be considered employees of the company using their services, and such persons may be counted in determining the company's credits under this Code section if their employment otherwise meets the definition of full-time job contained herein. In addition, an individual's employment shall not be deemed to have a predetermined end date solely by virtue of a mandatory retirement age set forth in a company policy of general application. The employment of any individual in a bona fide executive, administrative, or professional capacity, within the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Section 213(a)(1), as such act existed on January 1, 2002, shall not be deemed to have a predetermined end date solely by virtue of the fact that such employment is pursuant to a fixed-term contract, provided that such contract is for a term of not less than one year.

(5) "Investment requirement" means the requirement that a minimum of \$800 million in qualified investment property shall have been purchased or acquired for use in a qualified project and be in service.

(6) "Job maintenance requirement" means the requirement that the monthly average number of full-time employees employed by the business enterprise during the first 60 months of the recapture period must equal or exceed 90 percent of the job requirement.

(7) "Job requirement" means the requirement that the number of full-time employees must equal or exceed 1,800.

(8) "Qualified investment property" means all real and personal property purchased or acquired by a taxpayer for use in a qualified project, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing facility.

(9) "Qualified project" means the construction of a new manufacturing facility in this state. For purposes of this paragraph, the term "manufacturing facility" means a single facility, including contiguous parcels of land, improvements to such land, buildings, building improvements, and any machinery or equipment that is used in the process of making, fabricating, constructing, forming, or assembling a product from components or from raw, unfinished, or semifinished materials, and any support facility. For purposes of this paragraph, the term "support facility" means any warehouses, distribution

centers, storage facilities, research and development facilities, laboratories, repair and maintenance facilities, corporate offices, sales or marketing offices, computer operations facilities, or administrative offices that are contiguous to the manufacturing facility that results from a qualified project, constructed or expanded as part of the same such project, and designed primarily for activities supporting the manufacturing operations at such manufacturing facility.

(10) "Recapture period" means the period of ten consecutive taxable years that commences after the taxable year in which the taxpayer has met both the investment requirement and the job requirement.

(b) A business enterprise that has operated an existing manufacturing facility in this state for the immediately three preceding years and that is planning a qualified project shall be allowed to take the credit provided by this Code section under the following conditions:

(1) An application is filed with the commissioner that:

(A) Describes the qualified project to be undertaken by the business enterprise, including when such project will commence;

(B) Certifies that such project will meet the investment requirement and the job requirement prescribed by this Code section, stating when the business enterprise expects to meet such requirements; and

(C) Certifies that during the recapture period applicable to such project the business enterprise will meet the job maintenance requirement prescribed by this Code section; and

(2) Following the commissioner's referral of the application to a panel composed of the commissioner of community affairs, the commissioner of economic development, and the director of the Office of Planning and Budget, said panel, after reviewing the application, certifies that the new facility will have a significant beneficial economic effect on the region for which it is planned. The panel shall make its determination within 30 days after receipt from the commissioner of the taxpayer's application and any necessary supporting documentation. Although the panel's certification may be based upon other criteria, a project that meets the minimum job and investment requirements specified in paragraph (1) of this subsection will have a significant beneficial economic effect on the region for which it is planned if one of the following additional criteria is met:

(A) The full-time employee jobs that will be located at the manufacturing facility resulting from such project will pay average wages that are, as determined by the Georgia Department of Labor for all jobs for the county in question:

(i) Twenty percent above such average wage for projects located in tier 1 counties;

(ii) Ten percent above such average wage for projects located in tier 2 counties; or

(iii) Five percent above such average wage for projects located in tier 3 or tier 4 counties; or

(B) The project demonstrates high growth potential based upon the prior year's Georgia net taxable income growth of over 20 percent from the previous year, if the taxpayer's Georgia net taxable income in each of the two preceding years also grew by 20 percent or more.

(c) Any lease for a period of five years or longer of any real or personal property used in a new manufacturing facility which would otherwise constitute qualified investment property shall be treated as the purchase or acquisition thereof by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the year in which the lease becomes binding on the lessor and the taxpayer.

(d) A business enterprise whose application is approved shall be allowed a credit against the tax imposed under this article in an amount equal to 6 percent of the cost of all qualified investment property purchased or acquired by the business enterprise in such year, subject to the conditions and limitations set forth in this Code section. Where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103. The taxpayer may file an election with the commissioner to take such credit against quarterly or monthly payments under Code Section 48-7-103 that become due before the due date of the income tax return on which such credit may be claimed. In the event of such an election, the commissioner shall confirm with the taxpayer a date, which shall not be later than 30 days after receipt of the taxpayer's election, when the taxpayer may begin to take the credit against such quarterly or monthly payments. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the taxpayer.

(e) The credit granted under subsection (d) of this Code section shall be subject to the following conditions and limitations:

(1) In order to qualify as a basis for the credit, the investment in qualified investment property must occur no sooner than April 1, 2003. The credit may be taken beginning with the taxable year in which the taxpayer has met both the investment requirement and the job requirement, and for such first year the credit may include qualified investment property purchased or acquired in prior years but after March 31, 2003. For each year in which a taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's Georgia income tax return which will set forth the following information, as a minimum:

(A) A description of the qualified project;

(B) The amount of qualified investment property acquired during the taxable year;

(C) The amount of tax credit claimed for the taxable year;

(D) The amount of qualified investment property acquired in prior taxable years;

(E) Any tax credit previously taken by the taxpayer against Georgia income tax liabilities or the taxpayer's quarterly or monthly payments under Code Section 48-7-103;

(F) The amount of tax credit carried over from prior years;

(G) The amount of tax credit utilized by the taxpayer in the current taxable year;

(H) The amount of tax credit to be carried over to subsequent tax years; and

(I) The monthly average number of full-time jobs during the taxable year;

(2) Any credit claimed under this Code section but not fully used in the manner prescribed in subsection (d) of this Code section may be carried forward for 15 years from the close of the later of:

(A) The taxable year in which the qualified investment property was acquired; or

(B) The taxable year in which both the job requirement and investment requirement are satisfied.

The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity but any unused investment tax credit may be transferred and continued by any transferee of the business enterprise;

(3) In the initial year in which the taxpayer claims the credit granted in subsection (d) of this Code section, the taxpayer shall include in the description of the project required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the project includes the acquisition of qualified investment property having an aggregate cost equal to or exceeding \$800 million and that the job requirement was satisfied during such year; and

(4) The utilization of the credit granted in subsection (d) of this Code section shall have no effect on the taxpayer's ability to claim depreciation for tax purposes on the assets acquired by the taxpayer, nor shall the credit have any effect on the taxpayer's basis in such assets for the purpose of depreciation.

(f) In no event may credits exceeding \$50 million in the aggregate be claimed under this Code section with respect to any one project.

(g) A taxpayer who is entitled to and takes credits provided by this Code section with respect to a qualified project shall not be allowed to take any of the credits authorized by Code Section 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.6, 48-7-40.7, 48-7-40.8, 48-7-40.9, 48-7-40.10, 48-7-40.11, 48-7-40.15, 48-7-40.17, 48-7-40.18, or 48-7-40.24 with respect to jobs, investments, child care, or ground-water usage shifts created by, arising from, related to, or connected in any way with the same project. Such taxpayer may take any credit authorized by Code Section 48-7-40.5 for the cost of retraining an employee located at the site of such project or the manufacturing facility resulting therefrom, but only with respect to costs incurred more than five years after the date the manufacturing facility first becomes operational.

(h) Not more than 60 days after the close of the fifth taxable year within the recapture period, the taxpayer shall file a report, using such form and providing such information as the commissioner may reasonably require, concerning whether it met the job maintenance requirement. If the taxpayer has failed to meet the job maintenance requirement, the taxpayer will forfeit the right to all credits provided by this Code section for such project. A taxpayer that forfeits such right is liable for all past taxes imposed by this article and all past payments under Code Section 48-7-103 that were forgone by the state as a result of the credits provided by this Code section, plus interest at the rate established by Code Section 48-2-40 computed from the date such taxes or payments would have been due if the credits had not been taken. No later than 90 days after notification by the commissioner that the taxpayer has failed to meet the job maintenance requirement, the taxpayer shall file amended income tax and withholding tax returns for all affected periods that recalculate those liabilities without regard to the forfeited credits and shall pay any additional amounts shown on such returns, with interest as provided herein.

(i) A taxpayer who fails to meet the job maintenance requirement because of force majeure may petition the commissioner for relief from such requirement. Such a petition must be made with and at the same time as the report required by subsection (h) of this Code section. If the commissioner determines that force majeure materially affected the taxpayer's ability to meet the job maintenance requirement, but that the portion of any year so affected was six months or less, the commissioner shall calculate the taxpayer's monthly average number of full-time employees for purposes of subsection (h) of this Code section by disregarding the affected months. If the commissioner determines that the affected portion of any such year was more than six months, the taxable year shall be disregarded in its entirety for purposes of the job maintenance requirement and the recapture period applicable to the qualified project shall be extended for an additional year.

(j) If the manufacturing facility resulting from a qualified project is abandoned at any time during the recapture period, the taxpayer will forfeit the right to all credits provided by this Code section for such project. A taxpayer that forfeits such right is liable for all past taxes imposed by this article and all past payments under Code Section 48-7-103 that were forgone by the state as a result of the credits provided by this Code section, plus interest at the rate established by Code Section 48-2-40 computed from the date such taxes or payments would have been due if the credits had not been taken. For purposes of this subsection, a manufacturing facility will be considered abandoned if there is, for any reason other than force majeure, a complete cessation of manufacturing operations for a period of 12 consecutive months or more during the recapture period. Not more than 60 days after the close of the recapture period, the taxpayer shall file a report, using such form and providing such information as the commissioner may require, concerning whether such an abandonment occurred. No later than 90 days after notification by the commissioner that an abandonment occurred, the taxpayer shall file amended income tax and withholding tax returns for all affected periods that recalculate those liabilities without regard to the forfeited credits and shall pay any additional amounts shown on such returns, with interest as provided herein.

(k) Unless more time is allowed therefor by Code Section 48-7-82 or 48-2-49, the commissioner may make any assessment attributable to the forfeiture of credits claimed under this Code section for the periods covered by any amended returns filed by a taxpayer pursuant to subsections (h) and (j) of this Code section within one year from the date such returns are filed. If the taxpayer fails to file the reports or any amended return required by subsections (h) and (j) of this Code section, the commissioner may assess additional tax or other amounts attributable to the forfeiture of credits claimed under this Code section at any time.

(1) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-40.25, enacted by Ga. L. 2003, p. 665, § 8; Ga. L. 2004, p. 690, § 21; Ga. L. 2005, p. 60, § 48/HB 95.)

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2003, p. 665, § 47(b), not codified by the General Assembly, provides that

this Act shall be applicable to all taxable years beginning on or after January 1, 2003.

Law reviews. — For note on the 2003 enactment of this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

RESEARCH REFERENCES

ALR. — State income tax treatment of intangible holding companies, 11 ALR6th 543.

48-7-40.26. Tax credit for film, video, or digital production in state.

(a) This Code section shall be known and may be cited as the "Georgia Entertainment Industry Investment Act."

(b) As used in this Code section, the term:

(1) "Affiliates" means those entities that are included in the production company's or qualified interactive entertainment production company's affiliated group as defined in Section 1504(a) of the Internal Revenue Code and all other entities that are directly or indirectly owned 50 percent or more by members of the affiliated group.

(2) "Base investment" means the aggregate funds actually invested and expended by a production company or qualified interactive entertainment production company as production expenditures incurred in this state that are directly used in a state certified production or productions.

(3) "Multimarket commercial distribution" means paid commercial distribution which extends to markets outside the State of Georgia.

(4) "Production company" means a company, other than a qualified interactive entertainment production company, primarily engaged in qualified production activities which have been approved by the Department of Economic Development. This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

(5) "Production expenditures" means preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, expenditures excluding license fees incurred with Georgia companies for sound recordings and musical compositions, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a Georgia travel agency or travel company; insurance costs and bonding, if purchased through a Georgia insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. This term shall not include postproduction expenditures for footage shot outside the State of Georgia, marketing, story rights, or distribution, but shall not affect other qualified story rights. This term includes payments to a loan-out company by a production company or qualified interactive entertainment production company that has met its withholding tax obligations as set out below. The production company or qualified interactive entertainment production company shall withhold Georgia income tax at the rate of 6 percent on all payments to loan-out companies for services performed in Georgia. Any amounts so withheld shall be deemed to have been withheld by the loan-out company on wages paid to its employees for services performed in Georgia pursuant to Article 5 of Chapter 7 of this title notwithstanding the exclusion provided in subparagraph (K) of paragraph (10) of Code Section 48-7-100. The amounts so withheld shall be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Georgia. For purposes of this chapter, loan-out company nonresident employees performing services in Georgia shall be considered taxable nonresidents and the loan-out company shall be subject to income taxation in the taxable year in which the loan-out company's employees perform services in Georgia, notwithstanding any other provisions in this chapter. Such withholding liability shall be subject to penalties and interest in the same manner as the employee withholding taxes imposed by Article 5 of Chapter 7 of this title and the commissioner shall provide by regulation the manner in which such liability shall be assessed and collected.

(6) "Qualified Georgia promotion" means a qualified promotion of this state approved by the Department of Economic Development consisting of a:

(A) Qualified movie production which includes a five-second long static or animated logo that promotes Georgia in the end credits before the below-the-line crew crawl for the life of the project and which includes a link to Georgia on the project's web page;

(B) Qualified TV production which includes an embedded five-second long Georgia promotion during each broadcast worldwide for the life of the project and which includes a link to Georgia on the project's web page;

(C) Qualified music video which includes the Georgia logo at the end of each video and within online promotions; or

(D) Qualified interactive game which includes a 15 second long Georgia advertisement in units sold and embedded in online promotions.

(7) "Qualified interactive entertainment production company" means a company whose gross income is less than \$100 million that is primarily engaged in qualified production activities related to interactive entertainment which has been approved by the Department of Economic Development. This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

(8) "Qualified production activities" means the production of new film, video, or digital projects produced in this state and approved by the Department of Economic Development, including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, music videos, interactive entertainment or sound recording projects used in feature films, series, pilots, or movies for television. Such activities shall include projects recorded in this state, in whole or in part, in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, video on demand, direct to DVD, digital platforms designed for the distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser supported sites, cable television stations, or public broadcasting stations. Such term shall not include the coverage of news and athletic events, local interest programming, instructional videos, corporate videos, or projects not shot, recorded, or originally created in Georgia.

(9) "Resident" means an individual as designated pursuant to paragraph (10) of Code Section 48-7-1, as amended.

(10) "State certified production" means a production engaged in qualified production activities which have been approved by the Department of Economic Development in accordance with regulations promulgated pursuant to this Code section. In the instance of a "work for hire" in which one production company or qualified interactive entertainment production company hires another production company or qualified interactive entertainment production company to produce a project or contribute elements of a project for pay, the hired company shall be considered a service provider for the hiring company, and the hiring company shall be entitled to the film tax credit.

(11) "Total aggregate payroll" means the total sum expended by a production company or qualified interactive entertainment production company on salaries paid to employees working within this state in a state certified production or productions. For purposes of this paragraph:

(A) With respect to a single employee, the portion of any salary which exceeds \$500,000.00 for a single production shall not be included when calculating total aggregate payroll; and

(B) All payments to a single employee and any legal entity in which the employee has any direct or indirect ownership interest shall be considered as having been paid to the employee and shall be aggregated regardless of the means of payment or distribution.

(c) For any production company or qualified interactive entertainment production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state did not exceed \$30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. The tax credit under this subsection shall be allowed if the base investment in this state equals or exceeds \$500,000.00 for qualified production activities and shall be calculated as follows:

(1) The production company or qualified interactive entertainment production company shall be allowed a tax credit equal to 20 percent of the base investment in this state; and

(2)(A) The production company or qualified interactive entertainment production company shall be allowed an additional tax credit equal to 10 percent of such base investment if the qualified production activity includes a qualified Georgia promotion. In lieu of the inclusion of the Georgia promotional logo, the production company or qualified interactive entertainment production company may offer alternative marketing opportunities to be evaluated by the Department of Economic Development to ensure that they offer equal or greater promotional value to the State of Georgia.

(B) The Department of Economic Development shall prepare an annual report detailing the marketing opportunities it has approved under the provisions of subparagraph (A) of this paragraph. The report shall include, but not be limited to:

(i) The goals and strategy behind each marketing opportunity approved pursuant to the provisions of subparagraph (A) of this paragraph;

(ii) The names of all production companies approved by the Department of Economic Development to provide alternative marketing opportunities;

(iii) The estimated value to the state of each approved alternative marketing opportunity compared to the estimated value of the Georgia promotional logo; and

(iv) The names of all production companies who chose to include the Georgia promotional logo in their final production instead of offering the state an alternative marketing proposal.

The report required under this paragraph shall be completed no later than January 1 of each year and presented to each member of the House Committee on Ways and Means, the Senate Finance Committee, the Senate Economic Development Committee, the House Committee on Economic Development and Tourism, and the Governor.

(d) For any production company or qualified interactive entertainment production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state exceeded \$30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. For purposes of this subsection, the excess base investment in this state is computed by taking the current year production expenditures in a state certified production and subtracting the average of the annual total production expenditures for 2002, 2003, and 2004. The tax credit shall be calculated as follows:

(1) If the excess base investment in this state equals or exceeds \$500,000.00, the production company or qualified interactive entertainment production company and its affiliates shall be allowed a tax credit of 20 percent of such excess base investment; and

(2)(A) The production company or qualified interactive entertainment production company and its affiliates shall be allowed an additional tax credit equal to 10 percent of the excess base investment if the qualified production activities include a qualified Georgia promotion. In lieu of the inclusion of the Georgia promotional logo, the production company or qualified interactive enter-

tainment production company may offer marketing opportunities to be evaluated by the Department of Economic Development to ensure that they offer equal or greater promotional value to the State of Georgia.

(B) The Department of Economic Development shall prepare an annual report detailing the marketing opportunities it has approved under the provisions of subparagraph (A) of this paragraph. The report shall include, but not be limited to:

(i) The goals and strategy behind each marketing opportunity approved pursuant to the provisions of subparagraph (A) of this paragraph;

(ii) The names of all production companies approved by the Department of Economic Development to provide alternative marketing opportunities;

(iii) The estimated value to the state of each approved alternative marketing opportunity compared to the estimated value of the Georgia promotional logo; and

(iv) The names of all production companies who chose to include the Georgia promotional logo in their final production instead of offering the state an alternative marketing proposal.

The report required under this paragraph shall be completed no later than January 1 of each year and presented to each member of the House Committee on Ways and Means, the Senate Finance Committee, the Senate Economic Development Committee, the House Committee on Economic Development and Tourism, and the Governor.

(e)(1) In no event shall the aggregate amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates exceed \$25 million. The maximum credit for any qualified interactive entertainment production company and its affiliates shall be \$5 million.

(2) The commissioner shall allow the tax credits for qualified interactive entertainment production companies on a first come, first served basis based on the date the credits are claimed. When the \$25 million cap is reached, the tax credit for qualified interactive entertainment production companies shall expire.

(f)(1) Where the amount of such credit or credits exceeds the production company's or qualified interactive entertainment production company's liability for such taxes in a taxable year, the excess may be taken as a credit against such production company's or qualified interactive entertainment production company's quarterly or monthly payment under Code Section 48-7-103. Each employee

whose employer receives credit against such production company's or qualified interactive entertainment production company's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the production company or qualified interactive entertainment production company.

(2) If a production company and its affiliates, or a qualified interactive entertainment production company and its affiliates, claim the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company and its affiliates, or the qualified interactive entertainment production company and its affiliates, will only be allowed to claim the credit authorized under this Code section to the extent that the Georgia resident employees included in the credit calculation authorized under this Code section and taken by the production company and its affiliates, or the qualified interactive entertainment production company and its affiliates, on such tax return under this Code section have been permanently excluded from the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

(g) Any tax credits with respect to a state certified production earned by a production company or qualified interactive entertainment production company and previously claimed but not used by such production company or qualified interactive entertainment production company against its income tax may be transferred or sold in whole or in part by such production company or qualified interactive entertainment production company to another Georgia taxpayer, subject to the following conditions:

(1) Such production company or qualified interactive entertainment production company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(2) Such production company or qualified interactive entertainment production company shall submit to the Department of Economic Development and to the Department of Revenue a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such production company's or qualified interactive entertainment production company's tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax

identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the Department of Economic Development or the Department of Revenue;

(3) Failure to comply with this subsection shall result in the disallowance of the tax credit until the production company or qualified interactive entertainment production company is in full compliance;

(4) The transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned;

(5) A transferee shall have only such rights to claim and use the tax credit that were available to such production company or qualified interactive entertainment production company at the time of the transfer, except for the use of the credit in paragraph (1) of subsection (f) of this Code section. To the extent that such production company or qualified interactive entertainment production company did not have rights to claim or use the tax credit at the time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against such production company or qualified interactive entertainment production company; and

(6) The transferee must acquire the tax credits in this Code section for a minimum of 60 percent of the amount of the tax credits so transferred.

(h) The credit granted under this Code section shall be subject to the following conditions and limitations:

(1) The credit may be taken beginning with the taxable year in which the production company or qualified interactive entertainment production company has met the investment requirement. For each year in which such production company or qualified interactive entertainment production company either claims or transfers the credit, the production company or qualified interactive entertainment production company shall attach a schedule to the production company's or qualified interactive entertainment production company's Georgia income tax return which will set forth the following information, as a minimum:

(A) A description of the qualified production activities, along with the certification from the Department of Economic Development;

(B) A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the base investment;

(C) The amount of tax credit claimed for the taxable year;

(D) Any tax credit previously taken by the production company or qualified interactive entertainment production company against Georgia income tax liabilities or the production company's or qualified interactive entertainment production company's quarterly or monthly payments under Code Section 48-7-103;

(E) The amount of tax credit carried over from prior years;

(F) The amount of tax credit utilized by the production company or qualified interactive entertainment production company in the current taxable year; and

(G) The amount of tax credit to be carried over to subsequent tax years;

(2) In the initial year in which the production company or qualified interactive entertainment production company claims the credit granted in this Code section, the production company or qualified interactive entertainment production company shall include in the description of the qualified production activities required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the activities included in the base investment or excess base investment equal or exceed \$500,000.00 during such year; and

(3) In no event shall the amount of the tax credit under this Code section for a taxable year exceed the production company's or qualified interactive entertainment production company's income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the investment occurred. No such credit shall be allowed the production company or qualified interactive entertainment production company against prior years' tax liability.

(i) The Department of Economic Development shall determine through the promulgation of rules and regulations what projects qualify for the tax credits authorized under this Code section. Certification shall be submitted to the state revenue commissioner.

(j) The state revenue commissioner shall promulgate such rules and regulations as are necessary to implement and administer this Code section.

(k) Any production company or qualified interactive entertainment production company claiming, transferring, or selling the tax credit

shall be required to reimburse the Department of Revenue for any department initiated audits relating to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer which may include the review of the credit provided in this Code section. (Code 1981, § 48-7-40.26, enacted by Ga. L. 2005, p. 1125, § 2/HB 539; Ga. L. 2006, p. 242, § 2/HB 194; Ga. L. 2008, p. 317, § 1/HB 1100; Ga. L. 2012, p. 976, § 2/HB 1027; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2012 amendment, effective May 2, 2012, rewrote subsection (b); redesignated former paragraph (c)(2) as present subparagraph (c)(2)(A); added the second sentence in subparagraph (c)(2)(A); added subparagraph (c)(2)(B); redesignated former paragraph (d)(2) as present subparagraph (d)(2)(A); added the second sentence in subparagraph (d)(2)(A); added subparagraph (d)(2)(B); added subsection (e); redesignated former subsection (e) as present subsection (f); in paragraph (f)(2), inserted “and its affiliates” and inserted “qualified interactive entertainment” throughout; redesignated former subsection (f) as present subsection (g); substituted “subsection (f)” for “subsection (e)” in paragraph (g)(5); and redesignated former subsections (g) through (j) as present subsection (h) through (k), respectively. See editor’s note for applicability.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, inserted “of this title” in the last sentence of paragraph (b)(5) and deleted “Georgia” preceding “Department of Economic Development” in subparagraph (c)(2)(A).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, a semicolon was inserted in paragraph (c)(1).

Editor’s notes. — Ga. L. 2005, p. 1125, § 3(a)/HB 539, not codified by the General Assembly, provides that this Code section shall apply to all taxable years beginning on or after January 1, 2005.

Ga. L. 2008, p. 317, § 2/HB 1100, not codified by the General Assembly, provides, in part, that the 2008 amendment shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2012, p. 976, § 3(c)/HB 1027, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to all tax years beginning on or after January 1, 2013.

U.S. Code. — Section 1504 of the Internal Revenue Code, referred to in this Code section, is codified as 26 U.S.C. § 1504.

Administrative rules and regulations. — Film tax credit, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, § 560-7-8-.45.

48-7-40.27. Tax credit for qualified investments.

(a) As used in this Code section, the term:

(1) “Credit” means a state income tax credit against the tax imposed pursuant to this article in an amount equal to 25 percent of the taxpayer’s qualified investment.

(2) “Qualified investment” means a cash investment in the research fund that is not a cash investment made by the state or on behalf of the state.

(3) “Research fund” means a fund that is an investment entity pursuant to paragraph (7) of Code Section 10-10-1, the purpose of which is to provide early-stage financing for businesses formed as a

result of the intellectual property resulting from the research conducted in the research universities in this state.

(b) A taxpayer shall be entitled to a credit for any qualified investment, subject to the conditions and limitations set forth in this Code section. Once the research fund reaches \$30 million in total qualified investments, investors shall no longer be eligible for a credit pursuant to this subsection with respect to all subsequent qualified investments.

(c) The credit provided in subsection (b) of this Code section shall be subject to the following conditions and limitations:

(1) In no event shall the credit for a taxable year exceed the taxpayer's income tax liability. Any unused portion of the credit shall be permitted to be carried forward and applied to the taxpayer's tax liability for the subsequent ten years. The credit shall not be applied against the taxpayer's prior years' tax liabilities;

(2) The utilization of the credit shall have no effect on the taxpayer's basis in its investment;

(3) A taxpayer shall only be allowed a credit for a qualified investment if the research fund issues to such taxpayer a certification that such investment meets the requirements of this Code section. Such certification shall include the taxpayer's name, address, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, the date, the amount of the qualified investment, and the amount of tax credit to which the taxpayer is entitled;

(4) If the taxpayer is a Georgia Subchapter "S" corporation, a partnership, or a limited liability company taxed as a partnership, the credit shall be claimed by the respective shareholders, partners, or members of such entities in the same manner as they would account for their proportionate shares of income or loss from such entities. For the purposes of this Code section, such shareholders, partners, or members shall be considered to have made the qualified investments attributable to their interest in such entities; and

(5) No taxpayer shall be eligible to claim the credit provided in subsection (b) of this Code section for a cash investment if they claim the tax credit provided in Code Section 48-7-40.28 for such cash investment.

(d) The research fund shall provide the department at least on an annual basis a report that includes the taxpayer's name, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, and the amount of the taxpayer's qualified investment for which the research fund has issued to such taxpayer the certification pursuant to paragraph (3) of subsection (c) of

this Code section. The research fund shall file this report with the department no later than January 31 of the year following the end of the reporting year.

(e) In the event that the research fund liquidates prior to the investment of all of the cash received from taxpayers, the credit claimed with respect to such uninvested cash shall be recaptured. Such recapture shall be equal to the amount of the credit attributable to the qualified investment not invested by the research fund and returned to the taxpayer by the research fund. The recaptured amount shall be treated as taxes payable to the state for the taxable year in which such return of such investment occurs.

(f) The commissioner may require such reports, promulgate such regulations, and gather such relevant data deemed necessary and advisable for the implementation of this Code section. (Code 1981, § 48-7-40.27, enacted by Ga. L. 2008, p. 938, § 1/HB 1196.)

Editor's notes. — Ga. L. 2008, p. 938, section shall be applicable to investments § 3/HB 1196, not codified by the General made on or after July 1, 2008. Assembly, provides, in part, that this Code

48-7-40.28. Limitation on credit for qualified investment tax credit.

(a) As used in this Code section, the term:

(1) "Credit" means a state income tax credit against the tax imposed pursuant to this article in an amount equal to 10 percent of the taxpayer's qualified investment.

(2) "Qualified investment" means a cash investment in a legal entity in which the research fund has invested; provided, however, that such investment has been made by the taxpayer at the invitation of the research fund with the express intention of permitting the taxpayer making such qualified investment to qualify for the credit.

(3) "Research fund" means a fund that is an investment entity pursuant to paragraph (7) of Code Section 10-10-1, the purpose of which is to provide early-stage financing for businesses formed as a result of the intellectual property resulting from the research conducted in the research universities in this state.

(b) A taxpayer shall be entitled to a credit for any qualified investment, subject to the conditions and limitations set forth in this Code section. Once the total amount of qualified investments reaches \$75 million, investors shall no longer be eligible for a credit pursuant to this subsection with respect to all subsequent qualified investments.

(c) The credit provided in subsection (b) of this Code section shall be subject to the following conditions and limitations:

(1) In no event shall the credit for a taxable year exceed the taxpayer's income tax liability. Any unused portion of the credit shall be permitted to be carried forward and applied to the taxpayer's tax liability for the subsequent ten years. The credit shall not be applied against the taxpayer's prior years' tax liabilities;

(2) The utilization of the credit shall have no effect on the taxpayer's basis in its investment;

(3) A taxpayer shall only be allowed a credit for a qualified investment if the research fund issues to such taxpayer a certification that such investment meets the requirements of this Code section. Such certification shall include the taxpayer's name, address, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, the date, the amount of the qualified investment, and the amount of the credit to which the taxpayer is entitled;

(4) If the taxpayer is a Georgia Subchapter "S" corporation, a partnership, or a limited liability company taxed as a partnership, the credit shall be claimed by the respective shareholders, partners, or members of such entities in the same manner as they would account for their proportionate shares of income or loss from such entities. For the purposes of this Code section, such shareholders, partners, or members shall be considered to have made the qualified investments attributable to their interest in such entities; and

(5) A taxpayer shall not claim the credit provided in subsection (b) of this Code section for a cash investment into the research fund.

(d) The research fund shall provide the department at least on an annual basis a report that includes the taxpayer's name, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, and the amount of the taxpayer's qualified investment for which the research fund has issued to such taxpayer the certification pursuant to paragraph (3) of subsection (c) of this Code section. The research fund shall file this report with the department no later than January 31 of the year following the end of the reporting year.

(e) The commissioner may require such reports, promulgate such regulations, and gather such relevant data deemed necessary and advisable for the implementation of this Code section. (Code 1981, § 48-7-40.28, enacted by Ga. L. 2008, p. 938, § 1/HB 1196.)

Editor's notes. — Ga. L. 2008, p. 938, shall be applicable to investments made § 3/HB 1196, not codified by the General on or after July 1, 2008. Assembly, provides that this Code section

48-7-40.29. (For effective date, see note.) Income tax credits for certain qualified equipment that reduces business or domestic energy or water usage.

(a) As used in this Code section, the term:

(1) "Cost" means the aggregate funds actually invested and expended by a taxpayer to put into service the qualified equipment.

(2) "Energy efficient equipment" means all machinery and equipment certified pursuant to rules and regulations promulgated for purposes of this Code section by the commissioner of natural resources, as effective in reducing business or domestic energy usage. Such certifications may include, by way of example and not limitation, any dishwasher, clothes washer, furnace, air conditioner, central heating and air conditioning system, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, energy efficient water heater, skylighting system, whole house fan, energy use meter, light-emitting diode lighting system, geothermal heating system, door, window, or window film which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's energy saving efficiency requirements or which have been designated as meeting or exceeding such requirements under each such agency's Energy Star program.

(3) "Qualified equipment" means energy efficient equipment or water efficient equipment.

(4) "Water efficient equipment" means all machinery and equipment certified pursuant to rules and regulations promulgated for purposes of this Code section by the commissioner of natural resources as effective in reducing business or domestic water usage. Such certifications shall include, by way of example and not limitation, water conservation systems capable of storing rain water or gray water for future use and reusing the collected water for the same residential or commercial property and other products used for the conservation or efficient use of water which have been designated by the United States Environmental Protection Agency as meeting or exceeding such agency's water saving efficiency requirements or which have been designated as meeting or exceeding such requirements under such agency's Water Sense program.

(b) Rules and regulations of the commissioner of natural resources shall establish classifications or categories of qualified equipment, and no item of such qualified equipment shall be included in more than one classification or category for purposes of claiming a tax credit under this Code section. The commissioner of natural resources may take all

reasonable and necessary steps to identify qualified equipment and to bring such equipment to the attention of taxpayers in this state qualified to install such equipment.

(c) After the effective date of this Code section, any taxpayer who is the ultimate purchaser of an item of qualified equipment for installation as part of new construction or for retrofit in this state shall be allowed a credit against the tax imposed under this article in the taxable year in which such qualified equipment was placed in service. The amount of the credit allowed under this Code section shall be 25 percent of the cost of the qualified equipment or \$2,500.00, whichever is less.

(d) The credit granted under subsection (c) of this Code section shall be subject to the following conditions and limitations:

(1) The aggregate amount of credit which shall be claimed and allowed by taxpayers in any taxable year under this Code section shall be limited solely and exclusively to the amount of federal funds granted to the state for purposes of this Code section. In any tax year in which no federal funds are available for such purposes, no credit shall be claimed and allowed under this Code section;

(2) A taxpayer that claims a credit allowed under this Code section shall not be eligible to claim such qualified equipment for the clean energy property credit provided in Code Section 48-7-29.14; and

(3) To claim a credit allowed by this Code section, the taxpayer shall provide any information required by the Department of Natural Resources or the department. Every taxpayer claiming a credit under this Code section shall maintain and make available for inspection by the Department of Natural Resources or the department any records that either entity considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(e) In no event shall the amount of the tax credit allowed by this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the qualified equipment was placed in service. No such credit shall be allowed the taxpayer against prior years' tax liability.

(f) After the qualified equipment is placed in service, a taxpayer seeking to claim any tax credit provided for under this Code section must submit an application to the commissioner for tentative approval of such tax credit. The commissioner shall promulgate the rules and

forms on which the application is to be submitted. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section within 60 days after receiving such application.

(g) The commissioner shall allow the tax credits on a first come, first served basis. In no event shall the aggregate amount of tax credits approved by the commissioner for all taxpayers under this Code section exceed the amount of federal funds granted to the state for purposes of this Code section.

(h) The Department of Natural Resources and the department shall be authorized to adopt rules and regulations to provide for the administration of the tax credit provided by this Code section. Specifically, the Department of Natural Resources and the department shall create a mechanism to track and report the status and availability of credits for the public to review at a minimum on a quarterly basis. (Code 1981, § 48-7-40.29, enacted by Ga. L. 2010, p. 1163, § 1/HB 1069; Ga. L. 2013, p. 141, § 48/HB 79.)

Delayed effective date. — Ga. L. 2013, p. 141, § 55/HB 79, not codified by the General Assembly, provides, in part, that the 2013 amendment “becomes effective on January 1 of the year following the year in which federal funds are made available for the purpose of funding the credit provided by Ga. L. 2010, p. 1163, Section 1 and in which the state auditor certifies in writing to the commissioner of natural resources and the state revenue commissioner that such funds have been received, have been deposited in the general fund, and are available for purposes of Ga. L. 2010, p. 1163, Section 1”. Funds were not appropriated at the 2013 session of the General Assembly.

Ga. L. 2010, p. 1163, § 7 provides that

this Code section becomes effective on January 1 of the year following the year in which federal funds are made available for the purpose of funding the credit provided by this Code section and in which the state auditor certifies in writing to the commissioner of natural resources and the state revenue commissioner that such funds have been received, have been deposited in the general fund, and are available for purposes of this Code section. Funds were not available as of June 2012.

The 2013 amendment, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (b) and paragraph (d)(1). For effective date of this amendment, see the delayed effective date note.

48-7-40.30. Income tax credit for certain qualified investments for limited period of time.

(a) The General Assembly finds that entrepreneurial businesses significantly contribute to the economy of the state. The intent of this Code section is to achieve the following:

(1) To encourage individual investors to invest in early stage, innovative, wealth-creating businesses;

(2) To enlarge the number of high quality, high paying jobs within the state both to attract qualified individuals to move to and work

within this state and to retain young people educated in Georgia's universities and colleges;

(3) To expand the economy of Georgia by enlarging its base of wealth-creating businesses; and

(4) To support businesses seeking to commercialize technology invented in Georgia's universities and colleges.

(b) As used in this Code section, the term:

(1) "Allowable credit" means the credit as it may be reduced pursuant to subparagraph (3) of subsection (i) of this Code section.

(2) "Headquarters" means the principal central administrative office of a business located in this state which conducts significant operations of such business.

(3) "Net income tax liability" means income tax liability reduced by all other credits allowed under this chapter.

(4) "Pass-through entity" means a partnership, an S-corporation, or a limited liability company taxed as a partnership.

(5) "Professional services" means those services specified in paragraph (2) of Code Section 14-7-2 or any service which requires as a condition precedent to the rendering of such service the obtaining of a license from a state licensing board pursuant to Title 43.

(6) "Qualified business" means a registered business that:

(A) Is either a corporation, limited liability company, or a general or limited partnership located in this state;

(B) Was organized no more than three years before the qualified investment was made;

(C) Has its headquarters located in this state at the time the investment was made and has maintained such headquarters for the entire time the qualified business benefited from the tax credit provided for pursuant to this Code section;

(D) Employs 20 or fewer people in this state at the time it is registered as a qualified business;

(E) Has had in any complete fiscal year before registration gross annual revenue as determined in accordance with the Internal Revenue Code of \$500,000.00 or less on a consolidated basis;

(F) Has not obtained during its existence more than \$1 million in aggregate gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans from chartered banking or savings and loan institutions;

(G) Has not utilized the tax credit described in Code Section 48-7-40.26;

(H) Is primarily engaged in manufacturing, processing, online and digital warehousing, online and digital wholesaling, software development, information technology services, research and development, or a business providing services other than those described in subparagraph (I) of this paragraph; and

(I) Does not engage substantially in:

- (i) Retail sales;
- (ii) Real estate or construction;
- (iii) Professional services;
- (iv) Gambling;
- (v) Natural resource extraction;
- (vi) Financial, brokerage, or investment activities or insurance; or
- (vii) Entertainment, amusement, recreation, or athletic or fitness activity for which an admission or membership is charged.

A business shall be substantially engaged in one of the above activities if its gross revenue from such activity exceeds 25 percent of its gross revenues in any fiscal year or it is established pursuant to its articles of incorporation, articles of organization, operating agreement or similar organizational documents to engage in such activity as one of its primary purposes.

(7) "Qualified investment" means an investment by a qualified investor of cash in a qualified business for common or preferred stock or an equity interest or a purchase for cash of qualified subordinated debt in a qualified business; provided, however, that funds constituting a qualified investment cannot have been raised or be raised as a result of other tax incentive programs. Furthermore, no investment of common or preferred stock or an equity interest or purchase of subordinated debt shall qualify as a qualified investment if a broker fee or commission or a similar remuneration is paid or given directly or indirectly for soliciting such investment or purchase.

(8) "Qualified investor" means an accredited investor as that term is defined by the United States Securities and Exchange Commission who is:

(A) An individual person who is a resident of this state or a nonresident who is obligated to pay taxes imposed by this chapter; or

(B) A pass-through entity which is formed for investment purposes, has no business operations, has committed capital under management of equal to or less than \$5 million, and is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund shall not qualify as a qualified investor.

(9) "Qualified subordinated debt" means indebtedness that is not secured, that may or may not be convertible into common or preferred stock or other equity interest, and that is subordinated in payment to all other indebtedness of the qualified business issued or to be issued for money borrowed and no part of which has a maturity date less than five years after the date such indebtedness was purchased.

(10) "Registered" or "registration" means that a business has been certified by the commissioner as a qualified business at the time of application to the commissioner.

(c) A qualified business shall register with the commissioner for purposes of this Code section. Approval of such registration shall constitute certification by the commissioner for 12 months after being issued. A business shall be permitted to renew its registration with the commissioner so long as, at the time of renewal, the business remains a qualified business.

(d) Any individual person making a qualified investment directly in a qualified business in the 2011, 2012, 2013, 2014, or 2015 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the tax imposed by this chapter commencing on January 1 of the second year following the year in which the qualified investment was made as provided in this Code section.

(e) Any pass-through entity making a qualified investment directly in a qualified business in the 2011, 2012, 2013, 2014, or 2015 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the tax imposed by this chapter commencing on January 1 of the second year following the year in which the qualified investment was made as provided in this Code section. Each individual who is a shareholder, partner, or member of an entity shall be allocated the credit allowed the pass-through entity in an amount determined in the same manner as the proportionate shares of income or loss of such pass-through entity would be determined. If an individual's share of the pass-through entity's credit is limited due to the maximum allowable credit under this Code section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(f) Tax credits claimed pursuant to this Code section shall be subject to the following conditions and limitations:

(1) The qualified investor shall not be eligible for the credit for the taxable year in which the qualified investment is made but shall be eligible for the credit for the second taxable year beginning after the qualified investment is made as provided in subsection (d) or (e) of this Code section;

(2) The aggregate amount of credit allowed an individual for one or more qualified investments in a single taxable year under this Code section, whether made directly or by a pass-through entity and allocated to such individual, shall not exceed \$50,000.00;

(3) In no event shall the amount of the tax credit allowed an individual under this Code section for a taxable year exceed such individual's net income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the qualified investment was made. No such credit shall be allowed against prior years' tax liability;

(4) The qualified investor's basis in the common or preferred stock, equity interest, or subordinated debt acquired as a result of the qualified investment shall be reduced for purposes of this chapter by the amount of the allowable credit; and

(5) The credit shall not be transferrable by the qualified investor except to the heirs and legatees of the qualified investor upon his or her death and to his or her spouse or incident to divorce.

(g) The registration of a business as a qualified business shall be subject to the following conditions and limitations:

(1) If the commissioner finds that any of the information contained in an application of a business for registration under this Code section is false, the commissioner shall revoke the registration of such business. The commissioner shall not revoke the registration of a business solely because it ceases business operations for an indefinite period of time, as long as the business renews its registration;

(2) A registration as a qualified business may not be sold or otherwise transferred, except that, if a qualified business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving company would otherwise meet the criteria for being a qualified business, the surviving company retains the registration for the 12 month registration period without further application to the commissioner. In such a case, the qualified business must provide the commissioner with written notice of the merger, conversion, consolidation, or similar transaction and such other information as required by the commissioner; and

(3) The commissioner shall report to the House Committee on Ways and Means and the Senate Finance Committee each year all of

the businesses that have registered with the commissioner as a qualified business. The report shall include the name and address of each business, the location of its headquarters, a description of the types of business in which it engages, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs.

(h) Any credit claimed under this Code section shall be recaptured in the following situations and shall be subject to the following conditions and limitations:

(1) If within two years after the qualified investment was made, the qualified investor transfers any of the securities or subordinated debt received in the qualified investment to another person or entity, other than a transfer resulting from one of the following:

(A) The death of the qualified investor;

(B) A transfer to the spouse of the qualified investor or incident to divorce; or

(C) A merger, conversion, consolidation, sale of the qualified business's assets, or similar transaction requiring approval by the owners of the qualified business under applicable law, to the extent the qualified investor does not receive cash or tangible property in such merger, conversion, consolidation, sale, or other similar transaction;

(2) Except as provided in paragraph (1) of this subsection, if within five years after the qualified investment was made, the qualified business makes a redemption with respect to the securities received or pays any principal of the subordinated debt;

(3) If within two years after the qualified investment was made, the qualified investor participates in the operation of the qualified business. For the purpose of this paragraph, a qualified investor participates in the operation of a qualified business if the qualified investor, or the qualified investor's spouse, parent, sibling, or child, or a business controlled by any of these individuals, provides services of any nature to the qualified business for compensation, whether as an employee, a contractor, or otherwise. However, a person who provides uncompensated professional advice to a qualified business whether as an officer, a member of the board of directors or managers or otherwise or participates in a stock or membership option or stock or membership plan, or both, shall be eligible for the credit;

(4) The amount of the credit recaptured shall apply only to the qualified investment in the particular qualified business in which the investment was made;

(5) The amount of the recaptured tax credit determined under this subsection shall be added to the qualified investor's income tax liability for the taxable year in which the recapture occurs under this subsection; and

(6) In the event the credit is recaptured because the qualified business ceases business operations, dissolves, or liquidates, the qualified investor may claim either the credit authorized under this Code section or any capital loss the qualified investor otherwise would be able to claim regarding that qualified business, but shall not be authorized to claim and be allowed both.

(i)(1) A qualified investor seeking to claim a tax credit provided for under this Code section shall submit an application to the commissioner for tentative approval of such tax credit between September 1 and October 31 of the year for which the tax credit is claimed or allowed. The commissioner shall promulgate the rules and forms on which the application is to be submitted. Amounts specified on such application shall not be changed by the qualified investor after the application is approved by the commissioner. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section.

(2) The commissioner shall provide tentative approval of the applications by the date provided in paragraph (3) of this subsection as follows:

(A) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2011 calendar year and claimed and allowed in the 2013 taxable year shall not exceed \$10 million in such year;

(B) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2012 calendar year and claimed and allowed in the 2014 taxable year shall not exceed \$10 million in such year;

(C) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2013 calendar year and claimed and allowed in the 2015 taxable year shall not exceed \$10 million in such year;

(D) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2014 calendar year and claimed and allowed in the 2016 taxable year shall not exceed \$5 million in such year; and

(E) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made

in the 2015 calendar year and claimed and allowed in the 2017 taxable year shall not exceed \$5 million in such year.

(3) The commissioner shall notify each qualified investor of the tax credits tentatively approved and allocated to such qualified investor by December 31 of the year in which the application was submitted. In the event that the credit amounts on the tax credit applications filed with the commissioner exceed the maximum aggregate limit of tax credits under this subsection, then the tax credits shall be allocated among the qualified investors who filed a timely application on a pro rata basis based upon the amounts otherwise allowed by this Code section. Once the tax credit application has been approved and the amount approved has been communicated to the applicant, the qualified investor may then apply the amount of the approved tax credit to its tax liability for the tax year for which the approved application applies.

(j) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-40.30, enacted by Ga. L. 2010, p. 1163, § 2/HB 1069; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2013, p. 243, § 6/HB 318.)

Effective date. — This Code section became effective January 1, 2011.

The 2013 amendments. — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in subparagraph (b)(6)(C), and substituted “to engage in such activity as one of its primary purposes” for “to engage as one of its primary purposes such activity” in the undesignated paragraph of paragraph (b)(6). The second 2013 amendment, effective April 29, 2013, substituted “2012, 2013, 2014, or 2015” for “2012, or 2013” in subsections (d) and (e); substituted “investor shall not be” for “investor is not” near the beginning of paragraph (f)(1); added “and” at the end of paragraph (f)(4); substituted a period for “; and” at the end of paragraph (f)(5); and deleted paragraph

(f)(6), which read: “To be eligible for the credit provided in this Code section, the qualified investor must file an application for the credit with the commissioner on or before June 30 of the year following the calendar year in which the qualified investment was made.”; substituted “shall submit” for “must submit” in the first sentence of paragraph (i)(1); deleted “and” at the end of subparagraph (i)(2)(B); substituted a semicolon for a period at the end of subparagraph (i)(2)(C); and added subparagraphs (i)(2)(D) and (i)(2)(E).

Administrative rules and regulations. — Qualified investor tax credit, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, § 560-7-8-.52.

48-7-41. Basic skills education program credits.

(a) As used in this Code section, the term:

(1) “Approved basic skills education” means employer provided or employer sponsored education that meets the following conditions:

(A) It enhances reading, writing, or mathematical skills up to and including the twelfth-grade level for employees who are

otherwise unable to function effectively on the job due to deficiencies in those areas or who would otherwise be displaced because such skill deficiencies would inhibit their training for new technology;

(B) It is approved and certified by the Technical College System of Georgia; and

(C) The employer does not require the employee to make any payment for the education, either directly or indirectly through use of forfeiture of leave time, vacation time, or other compensable time.

(2) "Cost of education" means direct instructional costs as defined by the Technical College System of Georgia including instructor salaries, materials, supplies, and textbooks but specifically excluding costs associated with renting or otherwise securing space.

(3) "Employee" means any employee resident in this state who is employed for at least 24 hours a week and who has been continuously employed by the employer for at least 16 consecutive weeks.

(4) "Employer" means any employer upon whom an income tax is imposed by this chapter.

(5) "Employer provided" refers to approved basic skills education offered on the premises of the employer or on premises approved by the Technical College System of Georgia by instructors hired by or employed by an employer.

(6) "Employer sponsored" refers to a contractual arrangement with a school, university, college, or other instructional facility which offers approved basic skills education that is paid for by the employer.

(b) A tax credit shall be granted to an employer who provides or sponsors an approved basic skills education program. The amount of the tax credit shall be equal to one-third of the costs of education per full-time equivalent student, or \$150.00 per full-time equivalent student, whichever is less, for each employee who has successfully completed an approved basic skills education program. No employer may receive a credit if the employer requires that the employee reimburse or pay the employer for the cost of education.

(c) The tax credit granted to any employer pursuant to this Code section shall not exceed the amount of the taxpayer's income tax liability for the taxable year as computed without regard to this Code section.

(d) To be eligible to claim the credit granted under this Code section, the employer must certify to the department the name of the employee, the course work successfully completed by such employee, the name of

the approved basic skills education provider, and such other information as may be required by the department to ensure that credits are only granted to employers who provide or sponsor approved basic skills education pursuant to this Code section and that such credits are only granted to employers with respect to employees who successfully complete such approved basic skills education. The department shall adopt rules and regulations and forms to implement this credit program. The department is expressly authorized and directed to work with the Technical College System of Georgia to ensure the proper granting of credits pursuant to this Code section.

(e) The Technical College System of Georgia is expressly authorized and directed to establish such standards as it deems necessary and convenient in approving employer provided and employer sponsored basic skills education programs. In establishing such standards, the Technical College System of Georgia shall establish required hours of classroom instruction, required courses, certification of teachers or instructors, and progressive levels of instruction and standardized measures of employee evaluation to determine successful completion of a course of study. (Code 1981, § 48-7-41, enacted by Ga. L. 1991, p. 1709, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 2008, p. 335, § 9/SB 435.)

48-7-42. Affiliated entity defined; assignment of corporate income tax credit; carryover of unused credit; joint and severable liability.

(a) As used in this Code section, the term “affiliated entity” means:

(1) A corporation that is a member of the taxpayer’s “affiliated group” within the meaning of Section 1504(a) of the Internal Revenue Code; or

(2) An entity affiliated with a corporation, business, partnership, or limited liability company taxpayer, which entity:

(A) Owns or leases the land on which a project is constructed;

(B) Provides capital for construction of the project; and

(C) Is the grantor or owner under a management agreement with a managing company of the project.

(b) In lieu of claiming any Georgia income tax credit for which a taxpayer otherwise is eligible for the taxable year (such eligibility being determined for this purpose without regard to any limitation imposed by reason of the taxpayer’s precredit income tax liability), the taxpayer may elect to assign such credit in whole or in part to one or more affiliated entities for such taxable year by attaching a statement to the taxpayer’s return for the taxable year; provided, however, that no

carryover attributable to the unused portion of any previously claimed or assigned credit may be assigned or reassigned, except as provided in subsection (d) of this Code section. Such election must be made on or before the due date for filing the applicable income tax return, including any extensions which have been granted. In the case of any credit that must be claimed in installments in more than one taxable year, the election under this subsection may be made on an annual basis with respect to each such installment, provided that the taxpayer shall notify the commissioner with respect to the assignment of each such installment by filing a separate copy of the election statement for such installment no later than the due date for filing the applicable income tax return, including any extensions which have been granted. Once made, an election under this subsection shall be irrevocable.

(c) The recipient of a tax credit assigned under subsection (b) of this Code section shall attach a statement to its return identifying the assignor of the tax credit, in addition to providing any other information required to be provided by a claimant of the assigned tax credit.

(d) If the assignor and the recipient of a tax credit assigned under subsection (b) of this Code section cease to be affiliated entities, any carryover attributable to the unused portion of such credit shall be transferred back to the assignor of the credit. Such assignor shall be permitted to use any such carryover itself, and also shall be permitted to assign such carryover to one or more affiliated entities, as if such carryover were an income tax credit for which the assignor became eligible in the taxable year in which the carryover was transferred back to the assignor.

(e) The assignor and recipient of a tax credit assigned under subsection (b) of this Code section shall be jointly and severally liable for any tax (plus interest and penalties, if any) attributable to the disallowance or recapture of the assigned credit.

(f) Notwithstanding the subsequent occurrence of any transaction, corporations that were treated as affiliated entities on December 31, 2001, shall continue to be so treated with respect to each other for purposes of this Code section for the taxable year during which they otherwise would cease to be affiliated entities (but for the modification contained in this subsection) and for the succeeding ten taxable years, but only if either the assignor or the recipient of the credit in question is a corporation as described in subparagraph (d)(2.2)(B) of Code Section 48-7-31 as it existed on December 31, 2001. (Code 1981, § 48-7-42, enacted by Ga. L. 1999, p. 9, § 1; Ga. L. 2000, p. 1339, § 1; Ga. L. 2001, p. 4, § 48; Ga. L. 2001, p. 984, § 11; Ga. L. 2002, p. 954, § 2; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 159, § 17/HB 488.)

Editor's notes. — The former provisions of this Code section, relating to tax credits for AFDC recipients, was based on Code 1981, § 48-7-42, enacted by Ga. L. 1995, p. 1155, § 1 and was repealed by Ga. L. 1997, p. 1021, § 9, effective April 22, 1997.

Ga. L. 1999, p. 9, § 2, not codified by the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 1999.

Ga. L. 2000, p. 1339, § 2, not codified by

the General Assembly, makes this Code section applicable to all taxable years beginning on or after January 1, 2000.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 294 (2001).

ARTICLE 3

RETURNS AND FURNISHING OF INFORMATION

RESEARCH REFERENCES

ALR. — Income tax: right to deduction in respect of obligations voluntarily assumed or paid, 79 ALR 977.

Right of taxpayer to relief from his own errors in assessing his income tax or making out his income tax return, 80 ALR 377.

Income tax: right of surviving spouse to make joint return where husband or wife dies during tax year, 99 ALR 587.

48-7-50. Persons required to file returns; filing of copies of all or part of taxpayers' federal tax returns.

(a) An income tax return with respect to the tax imposed by this chapter shall be filed with the commissioner by every:

(1) Resident who is required to file a federal income tax return for the taxable year;

(2) Nonresident who has federal gross income from sources within this state;

(3) Resident estate or trust that is required to file a federal income tax return;

(4) Nonresident estate or trust that has federal gross income from sources within this state; and

(5) Resident or nonresident who has taxable income subject to Georgia income tax for the taxable year who does not have taxable income subject to federal income tax for the same taxable year.

(b) The commissioner may require each taxpayer by regulation to file with the return required by this chapter a copy of all or any part of the taxpayer's federal income tax return for the corresponding period. (Code 1933, § 92-3201, enacted by Ga. L. 1971, p. 605, § 7; Code 1933,

§ 91A-3701, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 71; Ga. L. 1987, p. 191, § 3.)

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and

refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 494.

C.J.S. — 85 C.J.S., Taxation, § 1834 et seq.

48-7-51. Corporation returns; contents; consolidated returns of two or more corporations; returns by receivers, trustees, and assignees; collection.

Every corporation subject to taxation under this chapter shall make a return stating specifically the items of its gross income and the deductions and credits allowed by this chapter. The income of two or more corporations shall not be included in a single return except with the express consent of the commissioner. When a receiver, trustee in bankruptcy, or assignee is operating the property or business of a corporation, the receiver, trustee, or assignee shall make returns for the corporation in the same manner and form as the corporation is required to make returns. Any tax due on the basis of returns made by a receiver, trustee, or assignee shall be collected in the same manner as if collected from the corporation of whose business or property he has custody and control. (Ga. L. 1931, Ex. Sess., p. 24, § 25; Code 1933, § 92-3202; Ga. L. 1941, p. 210, § 9; Ga. L. 1943, p. 109, § 1; Code 1933, § 91A-3702, enacted by Ga. L. 1978, p. 309, § 2.)

JUDICIAL DECISIONS

Intent of section. — This section is intended to authorize the commissioner to allow affiliated Georgia corporations to file a single or consolidated state income tax return. *Gable Indus., Inc. v. Blackmon*, 233 Ga. 542, 212 S.E.2d 328 (1975) (see O.C.G.A. § 48-7-51).

Words "single" and "consolidated" refer to same kind of return in con-

trast to separate return. *Gable Indus., Inc. v. Blackmon*, 233 Ga. 542, 212 S.E.2d 328 (1975).

Notice that consent to file consolidated return might be revoked. — If the commissioner intends to put the taxpayer on notice that permission to file consolidated returns might be retroactively revoked, the language used in the

documents should express this intention in clear terms. *Gable Indus., Inc. v. Blackmon*, 233 Ga. 542, 212 S.E.2d 328 (1975).

Inequitable to retroactively revoke permission after extensive period of reliance. — Attempt to retroactively revoke written permission to file single returns after the lapse of an extended period of time, during which the taxpayer is allowed to conduct the taxpayer's busi-

nesses in reliance thereon, creates an inequity. *Gable Indus., Inc. v. Blackmon*, 233 Ga. 542, 212 S.E.2d 328 (1975).

Successor commissioner cannot retroactively revoke permission to file consolidated return to the detriment of the taxpayer after the taxpayer's reliance thereon. *Gable Indus., Inc. v. Blackmon*, 233 Ga. 542, 212 S.E.2d 328 (1975).

OPINIONS OF THE ATTORNEY GENERAL

No right to file consolidated returns. — General Assembly does not give to corporate taxpayers, for Georgia income

tax purposes, the right to file consolidated income tax returns. 1969 Op. Att'y Gen. No. 69-77.

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 1834, 1901 et seq., 1925, 1929.

48-7-52. Returns by corporations of information concerning dividend payments; oath; contents.

Every corporation subject to the tax imposed by this chapter shall render a correct return of its payments of dividends. The return shall be duly verified under oath and shall state with respect to each shareholder who is a resident of this state the name and address of each shareholder, the number of shares owned by the shareholder, and the amount of dividends paid to the shareholder. (Ga. L. 1931, Ex. Sess., p. 24, § 29; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3206; Ga. L. 1935, p. 121, § 8; Code 1933, § 91A-3705, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 1825 et seq., 1862 et seq., 1882 et seq., 1901 et seq.

48-7-53. Partnership returns; contents; oath; "partnership" and "partner" defined.

Every partnership including, but not limited to, a foreign partnership, the individual members of which are subject to taxation under this chapter, shall make a return for each taxable year. The return shall state specifically the items of the partnership's gross income and the deductions allowed by this chapter, shall include the names and addresses of the individuals who would be entitled to share in the net

income of the partnership if the net income were distributed, and shall specify the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners. The term “partnership” includes, but is not limited to, a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on and which is not, within the meaning of this chapter, a trust, estate, or corporation. The term “partner” includes, but is not limited to, a member in such syndicate, group, pool, joint venture, or organization. (Ga. L. 1931, Ex. Sess., p. 24, § 27; Code 1933, § 92-3204; Ga. L. 1935, p. 121, § 7; Code 1933, § 91A-3703, enacted by Ga. L. 1978, p. 309, § 2.)

Cross references. — Partnerships “Aggregate-Plus Theory of Partnership generally, T. 14, C. 8. Taxation,” see 43 Ga. L. Rev. 717 (2009).

Law reviews. — For article,

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 494. **C.J.S.** — 85 C.J.S., Taxation, §§ 1834, 1845 et seq., 1901 et seq.

48-7-54. Electronic filing for nonindividual taxpayers.

The commissioner may require any nonindividual taxpayer and any return preparer who prepares any return, report, or other document required to be filed by this chapter to electronically file any return, report, or other document required to be filed by this chapter when the federal counterpart of such return, report, or other document is required to be filed electronically pursuant to the Internal Revenue Code of 1986 or Internal Revenue Service regulations. The commissioner shall be authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to effectuate this Code section. (Code 1981, § 48-7-54, as enacted by Ga. L. 2008, p. 898, § 9/HB 1151; Ga. L. 2010, p. 895, § 3/HB 1138.)

Editor’s notes. — This Code section formerly pertained to returns of persons making payments to taxpayers and disallowance of unreported payments. The former Code section was based on Ga. L. 1931, Ex. Sess., p. 24, § 26; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3205; Ga. L. 1937, p. 109, § 13; Code 1933, § 91A-3704, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 19. Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides, in part, that this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

48-7-55. Required questions on returns for individuals.

Reserved. Repealed by Ga. L. 2005, p. 529, § 1/HB 556, effective July 1, 2005.

Editor's notes. — This Code section § 92-3208; Ga. L. 1969, p. 744, § 1; Code was based on Ga. L. 1931, Ex. Sess., p. 24, 1933, § 91A-3706, enacted by Ga. L. 1978, § 56; Ga. L. 1931, p. 7, § 85; Code 1933, p. 309, § 2.

48-7-56. Time and place of filing returns; extensions; tentative returns; extensions for members of armed forces; estimated returns.

(a) Returns of taxpayers other than corporations shall be filed with the commissioner on or before April 15 in each year except that in the case of taxpayers using a fiscal year the return shall be filed on or before the fifteenth day of the fourth month after the close of the fiscal year. However, in the case a taxpayer's return is allowed to be filed at a later date, pursuant to the Internal Revenue Code of 1986 as it existed on or after January 1, 2003, because the taxpayer has electronically filed returns, the date the return shall be filed shall be extended without interest and penalty to the date the return is allowed to be filed pursuant to the Internal Revenue Code of 1986 as it existed on or after January 1, 2003. Returns of corporations made on the basis of a calendar year shall be filed on or before the fifteenth day of March following the close of the calendar year, and returns of corporations made on the basis of a fiscal year shall be filed on or before the fifteenth day of the third month following the close of the fiscal year. Returns required for a taxable year relating to returns of domestic import sales corporations and former domestic import sales corporations and foreign sales corporations shall be filed on or before the fifteenth day of the ninth month following the close of the taxable year. The commissioner may allow further time for filing returns in the case of sickness or other disability or whenever in his judgment good cause exists for the extension. In case a taxpayer is granted an extension of time to file a return, the commissioner may require a tentative return to be filed on or before the due date of the return for which the extension is granted. A tentative return shall be made on the usual form, shall be plainly marked "tentative," shall state the estimated amount of the tax believed to be due, and shall be properly signed by the taxpayer.

(b) A member of the armed forces of the United States serving outside the continental United States may file his required return for a taxable year ending during such service, without prior application, at any time within a period of six months following the return of the serviceman to the continental United States. During the period of extension, no interest shall accrue and no penalties shall be imposed.

(c) Any taxpayer may file an estimated income tax return within the taxpayer's taxable year in compliance with rules and regulations promulgated by the commissioner. Estimated returns shall be plainly marked "estimated." (Ga. L. 1931, Ex. Sess., p. 24, § 32; Ga. L. 1931, p.

7, § 85; Code 1933, § 92-3210; Ga. L. 1937, p. 109, § 14; Ga. L. 1952, p. 230, § 1; Ga. L. 1952, p. 360, § 1; Ga. L. 1955, p. 193, § 1; Ga. L. 1955, Ex. Sess., p. 27, § 5; Code 1933, § 91A-3708, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1988, p. 1380, § 2; Ga. L. 1999, p. 81, § 48; Ga. L. 2003, p. 442, § 3.)

Editor’s notes. — Ga. L. 1988, p. 1380, § 8, not codified by the General Assembly, provides: “This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval,

except that the state revenue commissioner, to the extent that he determines administratively necessary, may delay the implementation of any provision of this Act to no later than January 1, 1989.”

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, § 1834.
ALR. — What constitutes “reasonable cause” under state statutes imposing pen-

alty on taxpayer for failure to file timely tax return unless such failure was due to “reasonable cause”, 29 ALR4th 413.

JUDICIAL DECISIONS

Cited in Wellborn v. Ga. Dep’t of Revenue (In re Wellborn), No. 12-2083, 2012

Bankr. LEXIS 4632 (Bankr. N.D. Ga. Aug. 20, 2012).

48-7-57. Penalty for failure to file timely return; rate; maximum; failure due to reasonable cause; reduction of tax due by partial payment, credit, or other penalty; applicability of federal return extension to state return.

(a) In case of failure to file an income tax return on the date prescribed for the filing, such date to be determined with regard to any extension of time for filing, there shall be added to the amount of tax required to be shown on the return 5 percent of the amount of the tax if the failure is for not more than one month with an additional 5 percent for each additional month or fraction of a month during which the failure to file continues. No penalty shall be assessed pursuant to this Code section which exceeds in the aggregate 25 percent of the amount of the tax. No penalty shall be assessed pursuant to this Code section when it is shown that the failure is due to reasonable cause and not due to willful neglect.

(b) For the purposes of this Code section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return.

(c) With respect to any return, the amount of the addition under subsection (a) of this Code section shall be reduced by the amount of the addition under paragraph (1) of subsection (a) of Code Section 48-7-86

for any month to which an addition to tax applies under both subsection (a) of this Code section and paragraph (1) of subsection (a) of Code Section 48-7-86.

(d) No penalty due to late filing shall be incurred by a taxpayer if the taxpayer attaches to his return a copy of an approved extension of time within which to file his federal income tax return which has been granted by the Internal Revenue Service and also files his state return within the period of time specified in the extension. In such instances, the taxpayer need not apply to the commissioner for an extension of time within which to file his state return. (Ga. L. 1931, Ex. Sess., p. 24, § 34; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3211; Ga. L. 1937, p. 109, § 15; Ga. L. 1964, p. 453, § 1; Ga. L. 1969, p. 719, § 1; Ga. L. 1971, p. 671, § 1; Code 1933, § 91A-3709, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, State and Local Taxation, § 738 et seq.

C.J.S. — 85 C.J.S., Taxation, §§ 1835, 1929.

ALR. — Constitutionality, construction, application and effect of specific provisions of state corporate income tax law in respect of tax evasion, 92 ALR 1073.

Time of mailing or time of receipt as determination of liability for penalty or additional amount for failure to pay tax or license fee within prescribed time, 158 ALR 370.

48-7-57.1. Filing of returns which are frivolous or desire to impede the administration of state income tax laws.

(a) A penalty of \$1,000.00 may be assessed against any individual who files what purports to be a return of the tax imposed by Article 2 of this chapter if:

(1) The purported return:

(A) Does not contain information on which the substantial correctness of the amount of tax shown to be due may be judged; or

(B) Contains information that on its face indicates that the amount of tax shown to be due is substantially incorrect; and

(2) The conduct described in paragraph (1) of this subsection is due to:

(A) A position which is frivolous; or

(B) A desire which appears on the purported return to delay or impede the administration of state income tax laws.

(b) The penalty imposed by subsection (a) of this Code section shall be in addition to any other penalty provided by law. (Code 1981,

§ 48-7-57.1, enacted by Ga. L. 1984, p. 357, § 1; Ga. L. 2004, p. 410, § 5.)

Editor's notes. — Ga. L. 1984, p. 357, § 2, not codified by the General Assembly, makes this Code section applicable with respect to returns filed after March 14, 1984.

Ga. L. 2004, p. 410, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2004.'"

48-7-58. Taxpayer activities distorting true net income; proper computation by commissioner; determination of taxable income of corporations engaging in improper activities; consideration of potential reasonable profits.

(a) When the commissioner has reason to believe that any taxpayer conducts his or her trade or business so as to evade taxes, distort directly or indirectly his or her true net income, or distort directly or indirectly the net income properly attributable to this state, whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, as a result of which the net income is arbitrarily assigned to a person related to the taxpayer, the commissioner may require the facts as he or she deems necessary for the proper computation of the entire net income and the net income properly attributable to this state. In determining the computation, the commissioner shall consider the fair profit which would normally arise from the conduct of the trade or business. The commissioner shall by regulation provide when to apply this subsection.

(b)(1) Additionally, the commissioner may determine the amount of taxable income of any one or more corporations for a calendar or fiscal year when a corporation:

(A) Subject to taxation under this chapter conducts its business in such manner as to benefit either directly or indirectly the members or stockholders of the corporation or any person interested in the business of the corporation by selling its products or the goods or commodities in which it deals at less than the fair price which might be obtained for the goods or commodities;

(B) A substantial portion of whose capital stock is directly or indirectly owned by another corporation acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of the corporations; or

(C) Directly or indirectly owning a substantial portion of the stock of another corporation acquires and disposes of the products of the corporation of which it so owns a substantial portion of the stock in such a manner as to create a loss or improper net income for either of the corporations.

(2) In his or her determination, the commissioner shall consider the reasonable profits which, but for the arrangement or understanding, might or could have been obtained by the corporation or corporations subject to taxation under this chapter from dealing in such products, goods, or commodities. (Ga. L. 1931, Ex. Sess., p. 24, § 31; Code 1933, § 92-3209; Code 1933, § 91A-3707, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2005, p. 159, § 18/HB 488.)

Editor's notes. — Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be

known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

JUDICIAL DECISIONS

Construction with provisions of § 48-7-31 as to subsidiaries and affiliates. — Bifurcated accounting rule of former Code 1933, § 92-3113(6) (see O.C.G.A. § 48-7-31) did not render former Code 1933, § 92-3209 (see O.C.G.A. § 48-7-58) meaningless because the purpose of this section is much broader than specific accounting rules provided in former Code 1933, § 92-3113. *Blackmon v. Campbell Sales Co.*, 125 Ga. App. 859, 189 S.E.2d 474 (1972).

Scope of commissioner's authority. — Discretionary authority granted under this section may be applied to taxpayers who are shifting income, whether operating wholly within this state, or within and outside the state, but the statute contains no authority for combining the income of related corporations. *Blackmon v. Camp-*

bell Sales Co., 125 Ga. App. 859, 189 S.E.2d 474 (1972) (see O.C.G.A. § 48-7-58).

Transfer of goods and services for fixed percentages and performance of services for subsidiaries without specific charges do not necessarily reveal a distortion of true net income whether by the arbitrary shifting of income, through price-fixing, charges for service, or otherwise so that a fair profit is not shown, as contemplated under former subsection (a) of this section or manipulations to create a loss or improper net income so that reasonable profits are not shown, as contemplated under former subsection (b) (see O.C.G.A. § 48-7-58). *Blackmon v. Campbell Sales Co.*, 125 Ga. App. 859, 189 S.E.2d 474 (1972).

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 1859, 1860, 1901 et seq.

48-7-59. Examination of federal income tax returns.

Whenever in the opinion of the commissioner it is necessary to examine any copy of the federal income tax returns of any taxpayer in order to audit properly the state returns of the taxpayer, the commissioner shall have the right to examine the federal returns and all statements, inventories, and schedules in support of the returns. (Ga. L. 1931, Ex. Sess., p. 24, § 47; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3215; Code 1933, § 91A-3710, enacted by Ga. L. 1978, p. 309, § 2.)

48-7-60. Confidentiality of tax information; exceptions; authorized inspection by certain officials; conditions; furnishing information to local tax authorities; conditions; furnishing information to nonofficials; conditions; effect of Code section.

(a) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the commissioner, other officer, employee, or agent, or any former officer, employee, or agent to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under the law of this state or any return or return information required by the Internal Revenue Code when the information or return is received from the Internal Revenue Service or submitted by the taxpayer as provided by the laws of this state. Nothing contained in this Code section shall be construed to prohibit the print or electronic publication of statistics so presented as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the Attorney General or other legal representative of the state, or use as evidence, of the report or return of a taxpayer in the event of any action or proceeding involving any tax liability of the taxpayer. Reports and returns shall be preserved for three years and thereafter until the commissioner orders them to be destroyed.

(b) The commissioner may permit the commissioner of internal revenue of the United States, the proper officer of any state imposing an income tax similar to that imposed by this chapter, or the authorized representative of either such officer to inspect the income tax returns of any taxpayer, or may furnish to the officer or his authorized representative an abstract of the return of income of any taxpayer or supply him with information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any taxpayer. The permission shall be granted or the information shall be furnished to the officer or his representative only if:

(1) The request is only for state tax information including federal tax information required by the state to be filed by the taxpayer with his state return;

(2) The requested information will be used solely for tax purposes;

(3) The requesting state has a confidentiality statute which complies with the requirements of Section 6103(p)(8) of the Internal Revenue Code; and

(4) The statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(c) The commissioner may permit the disclosure of inventories, depreciable assets, accumulated depreciation, and book value of depreciable assets to local tax authorities in this state to be used solely for ad valorem tax purposes, provided that the furnishing of the information is not prohibited by Section 6103 of the Internal Revenue Code; and provided, further, that the furnishing of the information to the local tax authorities shall not be deemed to change the confidential character of the information, and any persons receiving the information pursuant to this subsection shall be subject to Code Section 48-7-61, relating to the sanctions to be imposed for the unauthorized disclosure of confidential material.

(d) This Code section shall not be construed to prohibit persons or groups of persons other than employees of the department from having access to tax information where necessary to conduct research commissioned by the department or where necessary in connection with the processing, storage, transmission, and reproduction of such tax information; the programming, maintenance, repair, testing, and procurement of equipment; and the providing of other services for purposes of tax administration. Any such access shall be pursuant to a written agreement with the department providing for the handling, permitted uses, and destruction of such tax information, requiring security clearance checks for such persons or groups of persons similar to those required of employees of the department, and including such other terms and conditions as the department may require to protect the confidentiality of the tax information to be disclosed. Any person who divulges or makes known any tax information obtained under this subsection shall be subject to the same civil and criminal penalties as those provided for divulgence of information by employees of the department.

(e) Notwithstanding any other law, this Code section shall remain in full force and effect unless specific reference is made in such other law to this Code section and to the disclosure of income tax information contained in any report or return required under this Code section. (Code 1933, § 91A-3711, enacted by Ga. L. 1979, p. 5, § 72; Ga. L. 1982, p. 3, § 48; Ga. L. 1987, p. 191, § 9; Ga. L. 2002, p. 372, § 7; Ga. L. 2010, p. 838, § 11/SB 388; Ga. L. 2011, p. 297, § 4/HB 346.)

The 2011 amendment, effective May 11, 2011, in subsection (d), in the first sentence, substituted “or where necessary in connection with the processing, storage, transmission, and reproduction of such tax information; the programming, maintenance, repair, testing, and procurement of equipment; and the providing of other services for purposes of tax administration” for “and where necessary for data

processing operations and maintenance of data processing equipment, provided the persons or groups of persons have obtained prior written approval from the commissioner and are subject to the direct security control of department personnel during all periods of access” and added the second sentence.

Cross references. — Failure of Senators to file state income tax returns,

§ 28-1-8.1. Inspection of public records generally, § 50-18-70 et seq.

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that

tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 92-3216, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Legislative purpose. — Legislative purpose of this section is to encourage voluntary and truthful reporting of income by ensuring confidentiality. The strict language of the statute and the severe penalty for defaulting from the statute's mandates emphasize a clear policy favoring nondisclosure. *Garrett v. State*, 243 Ga. 322, 253 S.E.2d 741 (1979) (decided under former Code 1933, § 92-3216).

Purpose of exceptions to confidentiality of tax information. — It is clear from the exceptions to the law that the confidentiality of tax returns was not absolute and that the social policy underlying the law providing for confidentiality of tax returns inured to the benefit of the state by encouraging the citizenry in voluntary reporting and assessment of income. Thus, the decision to produce the returns or appeal an order demanding the returns for use in a criminal prosecution lies with the Attorney General. *Garrett v. State*, 147 Ga. App. 666, 250 S.E.2d 1 (1978), *aff'd*, 243 Ga. 322, 253 S.E.2d 741 (1979) (decided under former Code 1933, § 92-3216).

Open Records Act, O.C.G.A. § 50-18-70, has not abrogated the mandate of O.C.G.A. § 48-7-60 that tax information be maintained inviolate. *Bowers v. Shelton*, 265 Ga. 247, 453 S.E.2d 741 (1995).

Permissible grounds for release of tax information. — No "proper judicial order" can be made except in an event when the integrity of the report itself is attacked or defended as the main and not as a merely collateral issue. *Garrett v. State*, 243 Ga. 322, 253 S.E.2d 741 (1979) (decided under former Code 1933, § 92-3216).

By "proper judicial order" a court may require employees of the department to produce income tax returns and reports only when such returns are directly in issue. *Garrett v. State*, 243 Ga. 322, 253 S.E.2d 741 (1979) (decided under former Code 1933, § 92-3216).

Use of tax information in litigation. — While a court will afford the utmost deference to a claim of privacy raised by the Attorney General with respect to income tax returns, it cannot defeat the need for evidence in pending criminal proceedings based upon a generalized interest in confidentiality, and particularly in extraordinary cases, when the interest in criminal prosecution is as important as the release of privileged information to other governmental units for the purpose of collection of taxes, there exists a specific exception to the confidentiality of income tax returns. *Garrett v. State*, 147 Ga. App. 666, 250 S.E.2d 1 (1978), *aff'd*, 243 Ga. 322, 253 S.E.2d 741 (1979) (decided under former Code 1933, § 92-3216).

Income tax director's motion to quash a subpoena for the production of tax returns of the deceased for use in a probate court proceeding to determine the existence of a common law marriage should have been granted because the proceeding did not

involve the integrity of the returns. *Goolsby v. Estate of Williams*, 243 Ga. App. 890, 534 S.E.2d 559 (2000).

Real property ad valorem records subject to Open Records Law. — Real property ad valorem digest, returns, and related records, not having been made confidential by O.C.G.A. § 48-7-60 or other sections, are, *prima facie*, subject to the provisions of the Open Records Law, O.C.G.A. § 50-18-70. *Pensyl v. Peach County*, 252 Ga. 450, 314 S.E.2d 434 (1984).

Illegal to conduct audits solely to uncover criminal activity. — If the plaintiffs could show that Department of Revenue employees, acting for the commissioner, were engaged in a series of audits conducted solely to uncover criminal activity unrelated to tax improprieties on the part of the person audited, such conduct would be illegal and would constitute grounds for the issuance of an injunction against such employees. *Willis v. Department of Revenue*, 255 Ga. 649, 340 S.E.2d 591 (1986).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 92-3216, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Legislative purpose. — The purpose of former Code 1933, §§ 92-3216 and 91A-212 (see O.C.G.A. §§ 48-7-60 and 48-2-15, respectively) was to encourage taxpayers to fully disclose the taxpayers' income and to protect any confidential information with reference to the taxpayers' business which it was essential to divulge in an income tax return; it was also the intent of the General Assembly to relieve the department from furnishing information concerning a taxpayer's income tax return. 1960-61 Op. Att'y Gen. p. 538 (decided under former Code 1933, § 92-3216).

Construction with other provisions. — Former Code 1933, §§ 92-3216 and 91A-212 (see O.C.G.A. §§ 48-7-60 and 48-2-15, respectively) must be construed together. 1954-56 Op. Att'y Gen. p. 767 (decided under former Code 1933, § 92-3216).

Permissible grounds for release of tax information. — Former Code 1933, §§ 91A-212, 91A-9932.1, 92-3216 and 92-9914 (see O.C.G.A. §§ 48-2-15, 48-7-60, and 48-7-61) did not authorize the release of tax information for use only in cases involving the integrity of the tax return itself as the main issue, and not merely as a collateral issue. 1971 Op. Att'y Gen. No. 71-184 (decided under former Code 1933, § 92-3216).

Disclosure of information which is neither secret nor confidential. — Prohibition contained in former Code 1933, § 92-3216 applied only to divulging the amount of income or particulars set forth or disclosed in an income tax report or return required by law. The listing of worthless checks, their amount, and the person issuing the same in an official audit of the department made by the state auditor did not come within the prohibition contained in former Code 1933, § 92-3216. Former Code 1933, § 40-1805 made it mandatory upon the state auditor to list and call special attention to all irregularities found in an examination of a department of the state government and to make available for the information of the public, through the press, such transactions, and for the further information of the public officials of the state charged with the responsibility of instituting legal action for violations of state laws. 1950-51 Op. Att'y Gen. p. 358 (decided under former Code 1933, § 92-3216).

Release of tax information to public officers and agencies. — Records of the income tax unit of the department constitute confidential information and should not be divulged to local taxing authorities of this state. 1952-53 Op. Att'y Gen. p. 471 (decided under former Code 1933, § 92-3216).

Neither former Code 1933, §§ 92-3216 and 91A-212 (see O.C.G.A. §§ 48-7-60 and 48-2-15, respectively) made income tax returns privileged or confidential as to the commissioner, the commissioner's agents, or other persons who properly have access

to the returns for use in the administration and the enforcement of any tax. 1965-66 Op. Att'y Gen. No. 66-225 (decided under former Code 1933, § 92-3216).

County board of tax assessors in the discharge of the boards' official duties are entitled to have access to the files of the commissioner, including the income tax files; any files furnished to county boards of tax assessors retain their privileged or confidential character in the hands of those officials. 1965-66 Op. Att'y Gen. No. 66-225 (decided under former Code 1933, § 92-3216).

Information contained in state income tax returns may not be furnished to city or municipal tax assessors. 1965-66 Op. Att'y Gen. No. 66-225 (decided under former Code 1933, § 92-3216).

Release of tax information to private firms and other groups. — It is not a violation of law for the department to deliver income tax returns to a private company for processing of the information onto punch cards if certain restrictions are followed. 1960-61 Op. Att'y Gen. p. 538 (decided under former Code 1933, § 92-3216).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 495.

ALR. — Constitutionality, construction, and application of statutory provisions

regarding publicity or confidential and privileged character of income tax information or returns, 151 ALR 1049.

48-7-61. Unlawful divulging of confidential information concerning income taxes under Code Section 48-7-60; penalties.

(a) It shall be unlawful for any person to violate any provision of Code Section 48-7-60 when the violation involves the divulging of information concerning income taxes.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

(c) In addition to the penalty provided in subsection (b) of this Code section, if the offender is an officer or employee of the state, he shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years after his dismissal. (Ga. L. 1931, Ex. Sess., p. 24, § 51; Code 1933, § 92-9914; Code 1933, § 91A-9932.1, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 112.)

JUDICIAL DECISIONS

Cited in *Goolsby v. Estate of Williams*, 243 Ga. App. 890, 534 S.E.2d 559 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Permissible grounds for release of tax information. — Former Code 1933, §§ 92-3216 and 92-9914 and Ga. L. 1937-38, Ex. Sess., p. 77 (see O.C.G.A.

§§ 48-7-60, 48-7-61, 48-1-6, and 48-2-1 et seq.) did not authorize release of tax information for use in any manner other than a case involving the integrity of the tax

return itself as the main issue, and not merely as a collateral issue. 1971 Op. Att’y Gen. No. 71-184.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 495, 496.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 192 et seq.

ALR. — Recovery of damages under

§ 7431(c)(1)(B) of Internal Revenue Code (26 USCA § 7431(c)(1)(B)) based on improper release of confidential tax return information, 154 ALR Fed. 537.

48-7-62. Contributions to be Georgia National Guard Foundation.

(a) Each Georgia income tax return form for taxable years beginning on or after January 1, 2005, shall contain appropriate language, to be determined by the state revenue commissioner, offering the taxpayer the opportunity to contribute to the Georgia National Guard Foundation by donating either all or any part of any tax refund due, by authorizing a reduction in the refund check otherwise payable, or by contributing any amount over and above any amount of tax owed by adding that amount to the taxpayer’s payment. The instructions accompanying the income tax return form shall contain a description of the purposes for which this fund was established and the intended use of moneys received from the contributions. Each taxpayer required to file a state income tax return who desires to contribute to the foundation may designate such contribution as provided in this Code section on the appropriate income tax return form.

(b) The Department of Revenue shall determine annually the total amount so contributed and shall transmit such amount to the Georgia National Guard Foundation. The Georgia National Guard Foundation is the nonprofit 501(c)(3) corporation whose purpose is to provide support to members of the Georgia Department of Defense. (Code 1981, § 48-7-62, enacted by Ga. L. 2005, p. 157, § 3/HB 282.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, “donating either” was substituted for “either donating” in the first sentence of subsection (a).

Editor’s notes. — Ga. L. 2005, p. 157,

§ 4/HB 282, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning on or after January 1, 2005.

48-7-63. Taxpayer contributions to permitted stem cell research through income tax payment and refund process.

(a) Each Georgia income tax return form for taxable years beginning on or after January 1, 2007, shall contain appropriate language, to be determined by the commissioner, offering the taxpayer the opportunity

to contribute to permitted stem cell research, as defined in Code Section 31-46-2, through the Georgia Commission for Saving the Cure by donating either all or any part of any tax refund due, by authorizing a reduction in the refund check otherwise payable, or by contributing any amount over and above any amount of tax owed by adding that amount to the taxpayer's payment. The instructions accompanying the income tax return form shall contain a description of the purposes for which the commission was established and the intended use of moneys received from the contributions. Each taxpayer required to file a state income tax return who desires to contribute to the commission may designate such contribution as provided in this Code section on the appropriate income tax return form.

(b) The Department of Revenue shall determine annually the total amount so contributed and shall transmit such amount to the Georgia Commission for Saving the Cure. (Code 1981, § 48-7-63, enacted by Ga. L. 2007, p. 473, § 3/SB 148; Ga. L. 2009, p. 8, § 48/SB 46.)

Editor's notes. — Ga. L. 2007, p. 473, § 4(b)/SB 148, not codified by the General Assembly, provides that this Code section shall apply to all taxable years beginning on and after January 1, 2007.

Law reviews. — For note on enactment of this Code section, see 24 Ga. St. U.L. Rev. 81 (2007).

ARTICLE 4

PAYMENT: DEFICIENCIES, ASSESSMENT, AND COLLECTION

RESEARCH REFERENCES

ALR. — Income tax: right to deduction in respect of obligations voluntarily assumed or paid, 79 ALR 977.

Power to make additional tax levy necessitated by failure of some property owners to pay their proportions of original levy, 79 ALR 1157.

Construction and application of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 ALR 107.

48-7-80. Time and place of payment of tax on basis of calendar or fiscal year.

The total amount of tax imposed by this chapter on taxpayers other than corporations shall be paid to the commissioner on or before April 15 following the close of the calendar year. If the return of a taxpayer other than a corporation is made on the basis of a fiscal year, the tax shall be paid to the commissioner on or before the fifteenth day of the fourth month following the close of the fiscal year. However, in the case a taxpayer's return is allowed to be filed at a later date, pursuant to the Internal Revenue Code of 1986 as it existed on or after January 1, 2003, because the taxpayer has electronically filed returns, the date of

payment shall be extended without interest and penalty to the date the return is allowed to be filed pursuant to the Internal Revenue Code of 1986 as it existed on or after January 1, 2003. The total amount of tax imposed by this chapter on corporations shall be paid to the commissioner on or before March 15, following the close of the calendar year. If the return of a corporation is made on the basis of a fiscal year, the tax shall be paid to the commissioner on or before the fifteenth day of the third month following the close of the fiscal year. (Ga. L. 1931, Ex. Sess., p. 24, § 33; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3301; Ga. L. 1952, p. 230, § 2; Ga. L. 1952, p. 360, § 2; Ga. L. 1955, p. 193, § 2; Code 1933, § 91A-3801, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1991, p. 368, § 1; Ga. L. 2003, p. 442, § 4.)

JUDICIAL DECISIONS

Payment of the tax imposed is not conditioned upon an assessment by the commissioner. *State v. Fuller*, 90 Ga. App. 349, 83 S.E.2d 69 (1954).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, *State and Local Taxation*, § 106. **C.J.S.** — 85 C.J.S., *Taxation*, § 1925.

48-7-81. Interest on taxes not timely paid; rate; determination of due date; effect of tax reduction on computation of interest; assessment, collection, and payment of interest on penalties or additions; grace period; assessment and collection period.

(a) If any amount of tax imposed by this chapter is not paid on or before the last date prescribed for payment, interest on the payment at the rate specified in Code Section 48-2-40 shall be paid for the period from the last date prescribed for payment to the date paid.

(b) The last date prescribed for payment of the tax shall be determined without regard to any:

(1) Extension of time for payment; or

(2) Notice and demand for payment issued by reason of jeopardy prior to the last date otherwise prescribed for the payment.

(c) If the amount of any tax imposed by this chapter is reduced by reason of a carry back of a net operating loss, the reduction in tax shall not affect the computation of interest under this Code section for the period ending with the last day of the taxable year in which the net operating loss arises.

(d) Except as otherwise specifically provided by law:

(1) Interest prescribed under this Code section shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as the tax. Any reference to the tax imposed by this chapter shall be deemed also to refer to interest imposed by this Code section on the tax;

(2) No interest under this Code section shall be imposed on the interest provided by this Code section;

(3) Interest shall be imposed under subsection (a) of this Code section on any assessable penalty, additional amount, or addition to the tax only if the assessable penalty, additional amount, or addition to the tax is not paid within ten days from the date of notice and demand for the payment. Interest shall be imposed only for the period from the date of the notice and demand to the date of payment;

(4) If notice and demand are made for the payment of any amount and if the amount is paid within ten days after the date of the notice and demand, interest under this Code section on the amount so paid shall not be imposed for the period after the date of the notice and demand.

(e) Interest prescribed under this Code section may be assessed and collected at any time during the period within which the tax to which the interest relates may be collected. (Ga. L. 1931, Ex. Sess., p. 24, § 37; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3304; Ga. L. 1971, p. 673, § 1; Ga. L. 1975, p. 156, § 1; Code 1933, § 91A-3803, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 20.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, State and Local Taxation, § 738 et seq.

C.J.S. — 85 C.J.S., Taxation, §§ 1738, 1758, 1759, 1925.

48-7-82. Periods of limitation for assessment of taxes; collection by execution; change or correction of net income.

(a) Except as otherwise provided in this Code section, the amount of income tax imposed by this chapter shall be assessed within the time periods specified in Code Section 48-2-49.

(b)(1) In the case of income received during the lifetime of a decedent, by the estate of a decedent during the period of administration, or by a corporation, the tax shall be assessed within three years after the return is filed, and any proceeding in court without assessment for the collection of the tax shall begin within 18 months after written request for the commencement of the proceeding (filed after the return is made) by the personal representative or other fiduciary representing the estate of the decedent or by the corporation. No such

proceeding shall begin after the expiration of three years from the date the return is filed. This paragraph shall not apply in the case of a corporation unless:

(A) The written request notifies the commissioner that the corporation contemplates dissolution at or before the expiration of the 18 month period;

(B) The dissolution is begun in good faith before the expiration of the 18 month period; and

(C) The dissolution is completed.

(2) If the taxpayer omits from gross income an amount properly includable in gross income which exceeds 25 percent of the amount of gross income less business expenses stated in the return, the tax may be assessed or a proceeding in court for the collection of the tax may begin without assessment at any time within six years after the return is filed.

(3) If the taxpayer omits from gross income an amount properly includable in gross income as an amount distributed in liquidation of a corporation, the tax may be assessed or a proceeding in court for the collection of the tax may begin without assessment at any time within five years after the return is filed.

(c) When the assessment of any income tax has been made within the period of limitation properly applicable to the assessment, the tax may be collected by execution, provided that the commissioner may transmit such execution electronically. The general provisions for tax executions as contained in Chapter 3 of this title shall apply to executions pursuant to this subsection.

(d) Reserved.

(e)(1) When a taxpayer's amount of net income for any year under this chapter as returned to the United States Department of the Treasury is changed or corrected by the commissioner of internal revenue or other officer of the United States of competent authority, the taxpayer, within 180 days after final determination of the changed or corrected net income, shall make a return to the commissioner of the changed or corrected income, and the commissioner shall make assessment or the taxpayer shall claim a refund based on the change or correction within one year from the date the return required by this paragraph is filed. If the taxpayer does not make the return reflecting the changed or corrected net income and the commissioner receives from the United States government or one of its agents a report reflecting the changed or corrected net income, the commissioner shall make assessment for taxes due based on the

change or correction within five years from the date the report from the United States government or its agent is actually received.

(2) In the event the taxpayer fails to notify the commissioner of the final determination of his United States income taxes, the commissioner shall proceed to determine, upon evidence that the commissioner has brought to his attention or that he otherwise acquires, the corrected income of the taxpayer for the fiscal or calendar year. If additional tax is determined to be due, the tax shall be assessed and collected. If it is determined that there has been an overpayment of tax for the year, the taxpayer, by his failure to notify the commissioner as required in paragraph (1) of this subsection, shall forfeit his right to any refund due by reason of the change or correction. A taxpayer who so fails to notify the commissioner, however, shall be entitled to equitable recoupment of 90 percent of any overpayment so determined against any additional tax liability so determined, the remaining 10 percent of the overpayment being totally forfeited as a penalty for failure to make a return as required by paragraph (1) of this subsection. (Ga. L. 1931, Ex. Sess., p. 24, § 36; Code 1933, § 92-3303; Ga. L. 1937, p. 109, § 18; Ga. L. 1952, p. 405, § 5; Ga. L. 1953, Jan.-Feb. Sess., p. 279, § 6; Ga. L. 1965, p. 276, § 1; Ga. L. 1975, p. 862, § 1; Code 1933, § 91A-3802, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 1350, § 2; Ga. L. 1986, p. 1480, § 2; Ga. L. 1997, p. 734, § 5.)

Editor's notes. — Ga. L. 1986, p. 1480, § 3, not codified by the General Assembly, provided effective dates for §§ 1 and 2 of that Act and provided that § 2 of that Act, which amended this Code section, would

apply to taxable years beginning on or after January 1, 1987.

Law reviews. — For annual survey of state and local taxation, see 38 Mercer L. Rev. 337 (1986).

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Section comports with equal protection requirements. — There is a rational basis for providing different statutes of limitations based on the different situations provided for in former Code 1933, § 92-3303(a) and (f). Therefore, former Code 1933, § 92-3303(f) did not deny equal protection under the state and federal Constitutions. *Blackmon v. Monroe*, 233 Ga. 656, 212 S.E.2d 827 (1975).

Period of limitations applies only to returns containing all required information. — Information may be applied improperly in calculating tax liability, but after three years, if all required information is included in the return, the commissioner is barred from maintaining an action against the taxpayer. However, when

the return does not give full information which is required, the statute will not run. *Redwine v. Arvaniti*, 83 Ga. App. 203, 63 S.E.2d 222 (1951).

Period of limitation inapplicable to examination of records. — Provision that deficiency assessment must be made within three years from the date of filing income tax return is only applicable to the assessment and collection of taxes and not to the right of examination of records. *Redwine v. Arvaniti*, 83 Ga. App. 203, 63 S.E.2d 222 (1951).

Taxpayer who missed three-year limitation period. — O.C.G.A. § 48-7-82(e) did not give a taxpayer who missed the three-year limitation period for filing amended state returns a second opportu-

nity to file an amendment; the taxpayer was not authorized by O.C.G.A. § 48-7-82(e) to submit an amended state tax return, and the taxpayer's untimely request for a refund was properly denied. *Graham v. McKesson Info. Solutions, LLC*, 279 Ga. App. 364, 631 S.E.2d 424 (2006).

Section does not bar the commissioner from collecting amount admitted to be due when the return is filed, if that amount has not been paid. *State v. Fuller*, 90 Ga. App. 349, 83 S.E.2d 69 (1954).

Administrative interpretation of waivers by former commissioner will not estop present commissioner from relying on waivers, which toll the statute of limitation for 30 days beyond a time fixed by an unambiguous statute. *Hawes v. Nashville, Chattanooga & St. Louis Ry.*, 223 Ga. 527, 156 S.E.2d 455 (1967).

No assessment proceeding is required when the return is accepted by the commissioner as correct. — Tax is due and payable as a personal debt without an assessment. An assessment is an action taken only with regard to the collection of an amount of tax exceeding that returned by the taxpayer. *State v. Fuller*, 90 Ga. App. 349, 83 S.E.2d 69 (1954).

What constitutes a "report reflecting the changed or corrected net income." — Conference report showing an increase in the taxpayer's tax liability, but which is not a final determination of the changed or corrected net income, is a "report reflecting the changed or corrected net income" for purposes of the statute of limitations. *Chilivis v. Levy*, 240 Ga. 792, 242 S.E.2d 594 (1978).

Conference report showing an increase in the taxpayer's tax is a report reflecting changed or corrected net income, notwithstanding the fact that the report does not show the changed or corrected net income

itself. *Chilivis v. Levy*, 240 Ga. 792, 242 S.E.2d 594 (1978).

Failure to amend after increase of income by IRS. — O.C.G.A. § 48-7-82(e)(1) required the debtor to provide an amended tax return because the IRS had reassessed the debtor's income upwards for the relevant tax years; because the debtor never filed an amended return for those years, the taxes were deemed nondischargeable pursuant to 11 U.S.C. § 523(a)(1)(B)(i). *Loc Ngoc Pham v. Ga. Dep't of Revenue (In re Loc Ngoc Pham)*, No. 04-80207-MGD, 2005 Bankr. LEXIS 758 (Bankr. N.D. Ga. Mar. 1, 2005).

Non-dischargeability in bankruptcy. — Georgia Department of Revenue was not entitled to summary judgment on the department's nondischargeability claim under 11 U.S.C. § 523(a)(1)(B)(i) based on the debtor's alleged failure to file an amended return as required by O.C.G.A. § 48-7-82(e)(1) because the department failed to establish that an amended return was actually due; the debtor's tax liability could have been adjusted by the IRS without an adjustment to the net income (for example, the debtor could have made a mistake in computing the tax based on net income that did not change), thus failing to trigger the filing requirement of O.C.G.A. § 48-7-82(e)(1). *Patterson v. Ga. Dep't. of Revenue (In re Patterson)*, No. 05-91543, 2006 Bankr. LEXIS 3675 (Bankr. N.D. Ga. Dec. 12, 2006).

When debtors failed to file an amended state income tax return after the debtors' federal income tax was revised upward by the IRS as required by O.C.G.A. § 48-7-82(e)(1), the debtors' state income tax based on the upward revision was excepted from discharge under 11 U.S.C. § 523(a)(1)(B)(i). *Thovongsa v. Ga. Dep't of Revenue (In re Thavongsa)*, No. 11-2133, 2012 Bankr. LEXIS 2451 (Bankr. N.D. Ga. Feb. 7, 2012).

Cited in *Jones v. Georgia Dep't of Revenue*, 158 Bankr. 535 (Bankr. N.D. Ga. 1993).

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Commissioner has three years to make assessment after return is filed. — This section is a safeguard which gives the state an additional year in which to make the state's original audit and assess-

ment. The General Assembly no doubt reasoned that if time permitted the commissioner to examine the return and make a proper assessment thereon within the two-year period, the commissioner

should not be given additional time to reopen the assessment and correct the commissioner's own errors. If, however, the large volume of returns filed prevents the commissioner from completing work within the two-year period, the commissioner is granted an additional year in which to perform the duty. 1945-47 Op. Att'y Gen. p. 569.

When taxpayer makes full disclosure in an income tax return but the tax is erroneously computed, the period of limitation is three years. 1952-53 Op. Att'y Gen. p. 214.

Only material amendments to return change period of limitations. — Obvious legislative intent of this section is

to give the department sufficient time to review returns of taxpayers, and when a deficiency is discovered, time to make an assessment. A reasonable interpretation of this section would be that when the taxpayer files an amended return which makes no material change, but makes changes of a minor nature, that the period of limitations should commence on the date of the original return. On the other hand, when the taxpayer files an amended return which makes a material change, a logical and reasonable interpretation would have the period of limitations commence as to the material change only at the time of the filing of the amended return. 1948-49 Op. Att'y Gen. p. 677.

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 1859, 1901 et seq., 1926 et seq.

ALR. — Duress in obtaining waiver from taxpayer extending time for assessment of income tax, 78 ALR 631.

Liability on bond given as condition of extension of time for payment of income tax, 117 ALR 452.

When statute of limitation commences

to run against action to recover tax, 131 ALR 822.

Settlement negotiations as estopping reliance on statute of limitations, 39 ALR3d 127.

Suspension of running of period of limitation, under 26 U.S.C.A. § 6503, for federal tax assessment or collection, 160 ALR Fed. 1.

48-7-83. Action for collection of tax out of assets of dissolved corporation; procedure.

Whenever any corporation has been dissolved or the assets of the corporation for any reason have passed entirely from the control of the corporation into the possession of its former stockholders or other persons without the payment of income taxes due the state, the commissioner shall have the right to bring action against any or all persons possessing the assets for the collection of any income taxes that may be due the state up to the value of the assets. If the assets have come into the possession of more than one person, each person shall have the right to prorate the amount of the tax according to the value of the assets coming into each person's possession. (Code 1933, § 92-3315, enacted by Ga. L. 1937, p. 109, § 20; Code 1933, § 91A-3807, enacted by Ga. L. 1978, p. 309, § 2.)

Cross references. — Dissolution of business corporations generally, § 14-2-1401 et seq.

RESEARCH REFERENCES

C.J.S. — 84 C.J.S., Taxation, §§ 614, 628 et seq. 85 C.J.S., Taxation, § 1160 et seq.

48-7-84. Actions in restraint of assessment or collection of income tax.

No action for the purpose of restraining the assessment or collection of any tax under this chapter shall be maintained in any court. (Ga. L. 1931, Ex. Sess., p. 24, § 40; Code 1933, § 92-3307; Code 1933, § 91A-3805, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 1204, 1207, 1208, 1928.

48-7-85. Authority of commissioner to prorate tax of person moving into or out of state; requirement that taxpayer prorate exemptions; applicability of Code section subject to commissioner's discretion.

Whenever the commissioner in his discretion determines that a person is not liable for the tax for an entire year because of moving into the state or moving out of the state, he may prorate the amount of the tax due the state and also may require the taxpayer to prorate any exemptions on the basis of the time spent within the state. The commissioner in his reasonable discretion shall be the sole judge as to when this Code section shall apply. (Code 1933, § 92-3316, enacted by Ga. L. 1937, p. 109, § 20; Code 1933, § 91A-3808, enacted by Ga. L. 1978, p. 309, § 2.)

JUDICIAL DECISIONS

Scope of commissioner's discretion. — Discretion given to the State Revenue Commission (now commissioner) does not mean that the commission has the discretion to determine what is the law, but simply that the commission can determine facts which are necessary to make applicable the commission's provisions. It is not empowered to exclude from the commission's provisions a person who manifestly comes within its terms. The

commission cannot set aside the law, but must enforce the law. That the commission is the sole judge of the facts to apply in a particular case does not mean that the commission may act arbitrarily and withhold benefits to which a taxpayer is clearly entitled. *Forrester v. Culpepper*, 194 Ga. 744, 22 S.E.2d 595, answer conformed to, 68 Ga. App. 382, 23 S.E.2d 106 (1942).

RESEARCH REFERENCES

C.J.S. — 84 C.J.S., Taxation, §§ 482 et seq., 568.

ALR. — Protection of out-of-state sell-

ers from state income tax by Public Law 86-272 (15 U.S.C.A. §§ 381 to 384), 182 ALR Fed. 291.

48-7-86. Penalty for failure to pay or for underpayment of taxes; rate; reductions of tax by partial payments and credits; penalty for nonpayment after notice and demand; “underpayment” defined; penalties for underpayments; relief of liability on joint return.

(a)(1) In case of failure to pay:

(A) The amount shown as tax on a return on or before the date prescribed for payment of the tax, such date to be determined with regard to any extension of time for payment, there shall be added to the amount of tax required to be shown on the return one-half of 1 percent of the amount of the tax if the failure is for not more than one month and with an additional one-half of 1 percent for each additional month or fraction of a month during which the failure continues. For the purposes of this subparagraph, the amount of tax shown on the return shall be reduced, for the purpose of computing the addition for any month, by the amount of any part of the tax which is paid on or before the beginning of the month and by the amount of any credit against the tax which is claimed on the return;

(B) Any amount in respect of any tax required to be shown on a return which is not so shown within ten days of the date of the notice and demand for the payment, the amount of tax stated in the notice and demand shall be increased by one-half of 1 percent of the amount of the tax if the failure is for not more than one month and by an additional one-half of 1 percent for each additional month or fraction of a month during which the failure continues. For the purposes of this subparagraph, the amount of tax stated in the notice and demand shall be reduced, for the purpose of computing the addition for any month, by the amount of any part of the tax which is paid before the beginning of the month.

(2) No penalty shall be assessed pursuant to this subsection which exceeds in the aggregate 25 percent of the amount of the tax or when it is shown that the failure is due to reasonable cause and not due to willful neglect.

(b) With respect to any return, the maximum amount of the addition permitted under subparagraph (a)(1)(B) of this Code section shall be reduced by the amount of the addition under subsection (a) of Code Section 48-7-57 which is attributable to the tax for which the notice and

demand are made and which is not paid within ten days of such notice and demand.

(c) If the amount required to be shown as tax on a return is less than the amount shown as tax on the return, subparagraph (a)(1)(A) of this Code section shall be applied by substituting the lower amount.

(d) For purposes of subsections (e) and (f) of this Code section, the term "underpayment" means a deficiency as defined in Code Section 48-7-1.

(e) If any part of any underpayment of tax required to be shown on a return is due to a negligent or intentional disregard of rules and regulations, but without intent to defraud, an amount equal to 5 percent of the underpayment shall be added to the tax.

(f) If any part of any underpayment of tax required to be shown on a return is due to fraud, an amount equal to 50 percent of the underpayment shall be added to the tax. This amount shall be in lieu of any amount determined under subsection (e) of this Code section. If any penalty is assessed under this subsection for an underpayment of tax which is required to be shown on a return, no penalty under Code Section 48-7-57 or subsection (a) of this Code section shall be assessed with respect to the same underpayment.

(g)(1) Notwithstanding any other provision of this Code section to the contrary, if:

(A)(i) A joint return has been made for a taxable year;

(ii) On such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;

(iii) The other individual filing the joint return establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement; and

(iv) Taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement; or

(B) The other individual has made the proper election pursuant to Section 6015 of the Internal Revenue Code, if applicable

then the other individual shall be relieved of liability for tax, including interest, penalties, and other amounts, for such taxable year to the extent such liability is attributable to such understatement, if such other individual has been relieved of liability for federal income taxes pursuant to Section 6015 of the Internal Revenue Code, if applicable.

(2) The commissioner shall promulgate any rules and regulations necessary to implement and administer this subsection. (Ga. L. 1931, Ex. Sess., p. 24, § 38; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3305; Ga. L. 1952, p. 405, § 8; Ga. L. 1953, Jan.-Feb. Sess., p. 279, § 7; Ga. L. 1953, Jan.-Feb. Sess., p. 294, § 1; Code 1933, § 92-3305, enacted by Ga. L. 1971, p. 376, § 1; Code 1933, § 91A-3804, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1993, p. 1649, § 3; Ga. L. 1999, p. 483, § 2; Ga. L. 2001, p. 984, § 12; Ga. L. 2004, p. 410, § 6.)

Editor's notes. — Ga. L. 1993, p. 1649, § 4, not codified by the General Assembly, makes subsection (f) of this Code section applicable to all taxable years beginning on or after April 27, 1993.
Ga. L. 1999, p. 483, § 3, not codified by the General Assembly, provides that: "Provisions of the Internal Revenue Code of 1986 which were as of January 1, 1999, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes."

Ga. L. 1999, p. 483, § 3, not codified by the General Assembly, makes subsection (g) of this Code section applicable to all taxable years beginning on or after January 1, 1999.
Ga. L. 2004, p. 410, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2004.'"

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 294 (2001).

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 1712 et seq., 1835, 1929.
ALR. — Constitutionality, construction, application and effect of specific provisions of state corporate income tax law in respect of tax evasion, 92 ALR 1073.
Construction and application of 26

USCA § 6015(b)(1)(C) requiring that spouse not know of understatement of tax arising from erroneous deduction, credit, or basis to obtain innocent spouse exemption from liability for tax, 154 ALR Fed. 233; 161 ALR Fed. 373.

ARTICLE 5

CURRENT INCOME TAX PAYMENT

Law reviews. — For article examining Georgia Withholding Tax Act of 1960, see 23 Ga. B.J. 33 (1960).

RESEARCH REFERENCES

ALR. — Payment of tax in installments as affecting time for claiming refund under statute requiring claim to be made within specified time after payment of tax, 94 ALR 978.

48-7-100. Definitions.

As used in this article, the term:

(1) "Calendar quarter" means a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(2) "Dependent exemption" means the withholding exemption status claimed in a withholding exemption certificate in effect under subsection (c) of Code Section 48-7-102.

(2.1) "Distribution credited" means a recognition or assignment of interest in proceeds or property of a partnership, Subchapter "S" corporation, or limited liability company, including a net distributive share of income which is passed through to members and which may be subject to Georgia income tax.

(2.2) "Distribution paid" means any disbursement of funds of a partnership, Subchapter "S" corporation, or limited liability company that is made to a member with respect to that member's interest in the entity and which may be subject to Georgia income tax.

(3)(A) "Doing business in this state" means a person:

(i) Having or maintaining directly or indirectly an office, warehouse, stock of goods, or other established facility or place of business in this state;

(ii) Performing services or owning, leasing, or operating tangible property in this state on a more or less permanent and not transitory basis; or

(iii) Having an officer, employee, agent, or other representative who has or maintains an office or who regularly or systematically solicits or promotes the person's business in this state.

(B) "Office" as used in this paragraph includes, but is not limited to, the residence of any officer, employee, agent, or representative of a person if the residence is held out to be, or identified in the trade with, the person's business.

(C) "Business" as used in this paragraph includes, but is not limited to, any particular activity, occupation, or employment habitually engaged in whether for financial gain or not.

(4) "Employee" means:

(A) Any individual who is a domiciliary or resident of this state and who performs services either within or outside, or both within and outside, this state for an employer;

(B) Any individual not a domiciliary or resident of this state who performs services within this state for an employer;

(C) An officer, employee, or elected official of any body politic or of any agency or instrumentality of a body politic, and an officer of a corporation; or

(D) Any person to whom a payment of wages is made whether or not the person is an employee of the payer of the wages at the time of payment.

(5) "Employer" means any person for whom an individual who is a resident or domiciliary of this state performs or performed any service of whatever nature within or outside this state or for whom a nonresident individual performs or performed any service of whatever nature within this state as the employee of the person, except that:

(A) If the person for whom the individual performs or performed the services does not have control of the payment of the wages for the service, the term "employer" includes the person having control of the payment of the wages; and

(B) In the case of a person paying wages on behalf of a nonresident individual, foreign partnership, or foreign corporation not doing business within this state, the term "employer" includes the person paying the wages.

(6) "Marital exemption" means the withholding exemption status claimed in a withholding exemption certificate in effect under subsection (c) of Code Section 48-7-102.

(6.1) "Member" shall mean partner, shareholder, or other person to whom the taxpaying obligation of the partnership, Subchapter "S" corporation, or limited liability company falls.

(6.2) "Nonresident" shall mean an individual or fiduciary member who resides outside this state and all other members whose headquarters or principal place of business is located outside this state.

(7) "Number of dependent exemptions claimed" means the number of dependent exemptions claimed in a withholding exemption certificate in effect under subsection (c) of Code Section 48-7-102.

(8) "Payroll period" means a period for which a payment of wages is ordinarily made to the employee by an employer. The term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semianual, or annual payroll period.

(8.1) "Periodic payment" means a designated distribution from a pension, annuity, or similar fund which is one of a series of substantially equal distributions made over:

(A) The life or life expectancy of the participant or the joint lives or joint life expectancies of the participant and his or her beneficiary; or

(B) A specified period of ten years or more.

(9) "Single exemption" means the withholding exemption status claimed in a withholding exemption certificate in effect under subsection (c) of Code Section 48-7-102.

(10) "Wages" means all remuneration paid including, but not limited to, the cash value of all remuneration paid in any medium other than cash, and shall be computed without any deduction of any amounts withheld by the employer for any reason and regardless of the terminology which the employer or employees may apply to the remuneration. The term does not include remuneration paid:

(A) For agricultural labor;

(B) For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(C) For services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by the order;

(D) For services performed for a foreign government or an international organization;

(E) For service not in the course of the employer's trade or business performed by an employee in any calendar quarter unless the cash remuneration paid for the service is \$50.00 or more and the service is performed by an individual who is regularly employed, as defined in the rules and regulations of the commissioner, by the employer to perform the services;

(F) For services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, or for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement by which the newspapers or magazines are to be sold by the individual at a fixed price, the individual's compensation being based on his retention of the excess of such price over the amount at which the newspaper or magazines are charged to him. This subparagraph shall apply whether or not the individual is guaranteed a minimum amount of compensation for the service or is entitled to be credited with the unsold newspapers or magazines returned;

(G) For services not in the course of the employer's trade or business to the extent paid in any medium other than cash;

(H) For services for an employer performed by a resident or domiciliary of this state in another state if at the time of the

payment of the remuneration the employer is required by the law of the other state to withhold income tax from the remuneration;

(I) For services performed as a master, officer, or any other seaman who is a member of the crew on a vessel engaged in foreign, coastal, intercoastal, interstate, or contiguous trade to the extent withholding from the remuneration is prohibited by the laws of the United States;

(J) To, or on behalf of, any employee:

(i) From or to a trust described in Section 401(a) of the Internal Revenue Code of 1986 which is exempt under Code Section 48-7-25 at the time of the payment unless the payment is made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust;

(ii) Under or to an annuity plan which at the time of the payment meets the requirements of Section 401(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1986;

(K) For services performed by a nonresident if the nonresident has been employed within this state for no more than 23 calendar days during the calendar quarter and the nonresident is not a taxable nonresident as defined in Code Section 48-7-1; or

(L) As fees to a public official for services employed by an employee for his employer.

(11) "Withholding agent" means any person required to deduct and withhold any tax under the provisions of Code Section 48-7-101. (Ga. L. 1960, p. 7, § 2; Ga. L. 1978, p. 982, § 1; Code 1933, § 91A-3901, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 74; Ga. L. 1987, p. 191, § 4; Ga. L. 1993, p. 597, §§ 1, 2; Ga. L. 1994, p. 595, § 1; Ga. L. 2005, p. 159, §§ 19, 20/HB 488; Ga. L. 2007, p. 271, § 5/SB 184; Ga. L. 2008, p. 898, § 10/HB 1151.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "United States" was deleted preceding "Internal Revenue Code" in subdivision (10)(J)(i).

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and

refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1993, p. 597, § 4, not codified by the General Assembly, provides that paragraphs (2.1), (6.1), and (6.2) of this Code section are applicable with respect to any

distribution paid or credited after January 1, 1994.

Ga. L. 1994, p. 595, § 3, not codified by the General Assembly, provides that paragraph (8.1) of this Code section is applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2005, p. 159, § 27(d)/HB 488, not codified by the General Assembly, provides that paragraph (10)(K) of this Code section is applicable to all calendar quarters on and after July 1, 2005.

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

U.S. Code. — Section 401 of the United States Internal Revenue Code, referred to in subparagraph (10)(J)(i), is codified as 26 U.S.C. § 401.

Law reviews. — For note on 1993 amendment of this Code section, see 10 Ga. St. U.L. Rev. 218 (1993). For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 255 (1994).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 92-3316, which was subsequently repealed but was succeeded by provisions of this Code section, are included in the annotations for this Code section.

Amount to be withheld not affected by garnishment. — Computation of the amount to be withheld under Ga. L. 1960, p. 7 is not affected by a garnishment. 1960-61 Op. Att'y Gen. p. 511 (decided under former Code 1933, § 92-3316).

When unrestricted subsistence allowance constitutes wages. — Unrestricted subsistence allowance, that was, an allowance which was in no wise limited to expenditures incurred on account of the

employee's business, was an allowance to defray the employee's personal living expenses and was, in substance, a form of compensation or remuneration within the scope of former Code 1933, § 92-3107 (see O.C.G.A. § 48-7-27) and the definition of "wages" in Ga. L. 1960, p. 7, § 2 (see O.C.G.A. §§ 48-7-100 and 48-7-110). To the extent that an employee incurred expenses on account of the business of an employer, and the employee was not otherwise reimbursed therefor, so that such expenses were a charge against this subsistence allowance, then the situation was one to be handled under regulations of the commissioner promulgated in accordance with Ga. L. 1960, p. 7. 1960-61 Op. Att'y Gen. p. 506.

RESEARCH REFERENCES

C.J.S. — 84 C.J.S., Taxation, §§ 443, 444. 85 C.J.S., Taxation, § 1830 et seq.

ALR. — Tips as taxable income, 10 ALR2d 191.

What constitutes trade or business under Internal Revenue Code (U.S.C.A. Title 26), 161 ALR Fed. 245.

48-7-100.1. Withholding of income tax from retirement benefits of federal annuitants.

The commissioner shall, not later than July 1, 1996, enter into an agreement with the federal Office of Personnel Management pursuant to 5 U.S.C. Section 8345 and its implementing regulations, 5 C.F.R. Sections 1901 through 1907, for the withholding of state income tax

from the retirement benefits of annuitants under the federal Civil Service Retirement and Disability Fund. (Code 1981, § 48-7-100.1, enacted by Ga. L. 1995, p. 1154, § 1.)

48-7-101. Collection of income tax at source; withholding.

(a) **Wages subject to withholding.** The amount of wages subject to withholding shall be the amount of each wage payment less the total withholding exemption allowance applicable to the wage payment as computed under subsection (b) of this Code section and less the standard deduction allowance applicable to the wage payment, determined according to the payroll period and marital status of the employee as follows:

<u>Payroll Period</u>	<u>Married Filing Jointly</u>	<u>Single</u>	<u>Married Filing Separately</u>
Weekly	\$ 57.50	\$ 44.25	\$ 28.75
Biweekly	115.00	88.50	57.50
Semimonthly	125.00	95.75	62.50
Monthly	250.00	191.50	125.00
Quarterly	750.00	575.00	375.00
Semiannual	1,500.00	1,150.00	750.00
Annual	3,000.00	2,300.00	1,500.00
Daily or Miscellaneous	8.20	6.30	4.10

(b) **Withholding exemption allowance.**

(1) The withholding exemption allowance applicable to a wage payment to an employee, determined according to the payroll period of the employee, shall be the amount shown in Column 1, below, or the amount shown in Column 2, below, as the withholding exemption status of the employee may be, plus the amount shown in Column 3, below, multiplied by the number of dependency exemptions claimed by the employee.

<u>Payroll Period</u>	<u>Col. 1 Single Exemption</u>	<u>Col. 2 Marital Exemption</u>	<u>Col. 3 Each Dependent Exemption</u>
Weekly	\$ 51.92	\$ 103.85	\$ 51.92

Biweekly	103.85	207.69	103.85
Semimonthly	112.50	225.00	112.50
Monthly	225.00	450.00	225.00
Quarterly	675.00	1,350.00	675.00
Semiannual	1,350.00	2,700.00	1,350.00
Annual	2,700.00	5,400.00	2,700.00
Daily or Miscellaneous	7.40	14.79	7.40

(2) If wages are paid for a miscellaneous payroll period or with respect to a period which is not a payroll period, the withholding exemption allowance with respect to each payment of wages shall be the exemption allowed for a daily payroll period multiplied by the number of days in the period including, but not limited to, Saturdays and Sundays, with respect to which the wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the withholding exemption allowance with respect to each payment of wages shall be exemption allowance for a daily payroll period multiplied by the number of days, including but not limited to, Saturdays and Sundays, which have elapsed since the last payment of wages by the employer during the calendar year, since the date of commencement of employment with the employer during the year, or since January 1 of the year, whichever is later.

(c) **Requirement of withholding.** Every employer making payments of wages shall deduct and withhold from the wages a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the income tax reasonably estimated to be due for the calendar year as a result of including the employee's wages received during the calendar year in the employee's Georgia adjusted gross income. The method of determining the amount to be withheld shall be prescribed by regulations of the commissioner, with due regard for the withholding exemption allowances of the employee provided in this Code section and the sum of any credits allowable against his tax.

(d) **Other employer plans.** Upon application by an employer and under conditions the commissioner deems proper, the commissioner may approve any plan of withholding developed by an employer to produce, insofar as practicable, the tax required to be withheld under the regulations prescribed by the commissioner under subsection (c) of

this Code section. Any plan authorized under this subsection shall be in lieu of the tax required to be deducted and withheld under the regulations prescribed by the commissioner.

(e) **Included and excluded wages.** If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by the employer to the employee for the period shall be deemed to be wages. If the remuneration paid by an employer to an employee for services performed during more than one-half of any payroll period of not more than 31 consecutive days does not constitute wages, then none of the remuneration paid by the employer to the employee for the period shall be deemed to be wages.

(f) **Unusual cases.** The commissioner may promulgate regulations for withholding in unusual cases, including the following:

(1) To authorize an employer to estimate the wages which will be paid to an employee in any quarter of the calendar year and to determine the amount to be deducted and withheld upon each payment of wages to the employee during the quarter as if the appropriate average of the wages so estimated constituted the actual wages paid;

(2) To authorize the employer to deduct and withhold from any payment of wages to an employee during a quarter the amount necessary to adjust the amount actually deducted and withheld during the quarter to the amount required to be deducted and withheld during the quarter if the payroll period of the employee were quarterly;

(3) To authorize an employer to deduct and withhold an amount in addition to that otherwise required to be withheld under this article in cases in which the employer and the employee agree to the additional withholding. The additional withholding shall for all purposes be considered tax required to be deducted and withheld under this article;

(4) To authorize an employer to deduct from wages, before withholding and deducting tax, any amount attributable to travel and other necessary business expenses of employees who are not reimbursed by the employer for the expenses and whose duties require such expenditures, other than traveling to and from the employee's home and place of employment;

(5) To prescribe the manner and extent to which withholding tax shall apply to extra payments to employees for services rendered, including, but not limited to, bonuses, separation pay, and year-end Christmas, or birthday payments and to authorize, under such

conditions as the commissioner deems proper, an employer to compute the tax to be withheld from the payments so as to make adjustments to the annual wages which the employer may pay to the employee. No withholding shall be required with respect to a Christmas payment or a birthday payment to an employee when the amount of the payment is not in excess of \$100.00;

(6) To prescribe the manner and extent to which withholding tax shall apply to unusual payments of wages; and

(7) To prescribe the manner and extent to which withholding tax shall apply to the proceeds of any lottery prize of \$5,000.00 or more awarded by the Georgia Lottery Corporation.

(g) Employees incurring no income tax liability.

(1) An employer is not required to deduct and withhold any tax under this article from a payment of wages to an employee if there is in effect with respect to the payment a withholding exemption certificate furnished to the employer by the employee certifying that the employee:

(A) Incurred no liability for income tax under this chapter for his preceding taxable year; and

(B) Anticipates that he will incur no liability under this chapter for income tax for his current taxable year.

(2) The withholding exemption certificate for use as provided in this subsection shall be in the form and shall contain such information as required by the commissioner.

(h) Withholding requirements for periodic payments.

(1) The payor of any periodic payment as defined in paragraph (8.1) of Code Section 48-7-100 shall withhold from such payment the amount which would be required to be withheld if such payment were a payment of wages by an employer to an employee for the appropriate payroll period.

(2) The payee of any periodic payment may elect to have paragraph (1) of this subsection not apply with respect to periodic payments made to such payee. Such an election shall remain in effect until revoked by the payee.

(3) The commissioner is authorized to prescribe forms and to promulgate rules and regulations setting forth the requirements for withholding from such periodic payments and the requirements for making elections not to withhold.

(i) Form 1099 withholding and reporting.

(1) A withholding agent shall be required to withhold state income tax at the rate of 6 percent of the amount of compensation paid for

labor services as defined in paragraph (3) of Code Section 48-7-21.1 to an individual, which compensation is reported on Form 1099 and with respect to which the individual has:

(A) Failed to provide a taxpayer identification number;

(B) Failed to provide a correct taxpayer identification number. Except as to the withholding rate specified in this paragraph, such failure shall be determined in the same manner as provided for in Section 3406 of the Internal Revenue Code and regulations thereunder; or

(C) Provided an Internal Revenue Service issued taxpayer identification number issued for nonresident aliens.

(2) Any withholding agent who fails to comply with the withholding requirements of this subsection shall be liable for the taxes required to have been withheld unless such withholding agent is exempt from federal withholding with respect to such individual pursuant to a properly filed Internal Revenue Service Form 8233 and has provided a copy of such form to the commissioner.

(j)(1) The payee of any nonperiodic payment may elect to have withholding made on distributions from a pension, annuity, or similar fund. Such an election shall remain in effect until revoked by the payee.

(2) Upon such election by a payee as provided in paragraph (1) of this subsection, the payor of any nonperiodic payment shall withhold from such payment the amount specified by the payee, but in no event shall the amount withheld be less than the amount which would be required to be withheld if such payment were a payment of wages by an employer to an employee for the appropriate payroll period.

(3) The commissioner shall be authorized to prescribe forms and to promulgate rules and regulations setting forth the requirements for withholding from such nonperiodic payments and the requirements for making elections to withhold. (Ga. L. 1960, p. 7, § 3; Ga. L. 1972, p. 1195, § 1; Ga. L. 1979, p. 926, § 1; Code 1933, § 91A-3902, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 926, § 2; Ga. L. 1987, p. 191, § 5; Ga. L. 1988, p. 1390, §§ 1, 2; Ga. L. 1992, p. 1296, § 2; Ga. L. 1994, p. 361, § 1; Ga. L. 1994, p. 381, § 3; Ga. L. 1994, p. 595, § 2; Ga. L. 1998, p. 1, § 3; Ga. L. 2006, p. 105, § 8/SB 529; Ga. L. 2007, p. 271, § 6/SB 184; Ga. L. 2008, p. 898, § 11/HB 1151.)

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable

year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that

tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1994, p. 361, § 2, not codified by the General Assembly, makes paragraph (f)(7) of this Code section applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1994, p. 595, § 3, not codified by the General Assembly, makes subsection (h) of this Code section applicable to all taxable years beginning on or after January 1, 1994.

Ga. L. 1998, p. 1, § 4, not codified by the General Assembly, makes paragraph (b)(1) of this Code section applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 2006, p. 105, § 1/SB 529, not codified by the General Assembly, provides: "This Act shall be known and may

be cited as the 'Georgia Security and Immigration Compliance Act.' All requirements of this Act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law."

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Administrative rules and regulations. — Returns and collections, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, Chapter 560-7-8.

Law reviews. — For review of 1998 legislation relating to revenue and taxation, see 15 Ga. St. U.L. Rev. 217 (1998). For article, "The Georgia Security and Immigration Compliance Act: Comprehensive Immigration Reform in Georgia — 'Think Globally ... Act Locally,'" see 13 Ga. St. B.J. 14 (2007).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 338 (1992). For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 255 (1994).

OPINIONS OF THE ATTORNEY GENERAL

Treatment of employee's unrestricted subsistence allowance. — Unrestricted subsistence allowance, that is, an allowance which is in no wise limited to expenditures incurred on account of the employee's business, is an allowance to defray the employee's personal living expenses and is, in substance, a form of compensation or remuneration within the scope of former Code 1933, § 92-3107 and the definition of "wages" in Ga. L. 1960, p.

7. To the extent that an employee incurs expenses on account of the business of the employer, and the employee is not otherwise reimbursed therefor, so that such expenses are a charge against this subsistence allowance, then the situation is one to be handled under regulations of the commissioner promulgated in accordance with Ga. L. 1960, p. 7. 1960-61 Op. Att'y Gen. p. 506.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 507.

C.J.S. — 85 C.J.S., Taxation, §§ 1926, 1927.

ALR. — Construction and application of state corporate income tax statutes allowing net operation loss deductions, 33 ALR5th 509.

48-7-102. Withholding exemption status.

(a)(1) A zero exemption status shall apply to any employee receiving wages who, on the withholding exemption certificate required under subsection (c) of this Code section, disclaims any exemption status or who fails to file with his employer the withholding exemption certificate required under subsection (c) of this Code section.

(2) A single exemption status shall be available to any employee receiving wages who at the time cannot qualify for a marital exemption or who disclaims a marital exemption, unless such employee is an individual who is eligible to be claimed as a dependent on another taxpayer's federal income tax return in which case a zero exemption status shall apply.

(3) A marital exemption status shall be available to any employee receiving wages who at the time is married and living with his spouse, but only if his spouse does not have in effect at that time a withholding exemption certificate claiming a single or marital exemption.

(b) An employee receiving wages shall be entitled on any day to one withholding dependency exemption for each individual with respect to whom he may reasonably be expected to be entitled to an exemption for the taxable year under Code Section 48-7-26.

(c)(1) On or before the date of the commencement of employment with any employer, the employee shall furnish the employer with a signed withholding certificate in the form prescribed by the commissioner relating to his withholding exemption status and the number of dependency exemptions which the employee claims. No exemption may be claimed to which the employee is not entitled. If the employee fails to furnish such completed certificate or furnishes erroneous information on such certificate to the employer, the employer will withhold as if the exemption status were single and zero until a withholding certificate is received which contains complete or corrected information, as necessary.

(2) Except as otherwise provided by rules or regulations of the commissioner, if an employee has filed with his employer an exemption certificate as required for federal withholding tax purposes, an employer may give effect to the exemption status and exemptions claimed on the federal exemption certificate when the certificate contains sufficient information to enable the employer to give effect to the withholding exemptions allowable under this Code section.

(3) Whenever during a calendar year the withholding exemption status of an employee or the number of dependency exemptions to which an employee is entitled changes or whenever an employee

reasonably expects such a change before the end of the calendar year which would entitle the employee to different withholding exemptions than those shown on the exemption certificate in effect for the employee, the employee shall file with his employer within ten days of the change or, for the next calendar year, on or before December 20 a new certificate indicating the change. In no event shall the withholding exemption status or the number of dependency exemptions claimed on a certificate exceed the number to which the employee is entitled.

(4)(A) A withholding exemption certificate furnished the employer when no previous certificate is in effect shall take effect as of the beginning of the first payroll period ending, or as of the first payment of wages made without regard to a payroll period, on or after the date on which the certificate is so furnished.

(B) A withholding exemption certificate furnished the employer when a previous certificate is in effect shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days from the date on which the certificate is so furnished. At the election of the employer, the certificate may be made effective with respect to any payment of wages made on or after the date on which the certificate is so furnished. For purposes of this subparagraph, the term "status determination date" means January 1 and July 1 of each year.

(5) A withholding exemption certificate which takes effect under this subsection shall continue in effect with respect to the employer until another certificate takes effect under this subsection. Each withholding exemption certificate which is in effect is, at the time of the receipt of any wages, a present representation of fact subject to the criminal penalties of Code Section 48-7-127. (Ga. L. 1960, p. 7, § 4; Code 1933, § 91A-3903, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 191, § 6; Ga. L. 1992, p. 1296, § 3.)

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 338 (1992).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 507.

C.J.S. — 85 C.J.S., Taxation, §§ 1879, 1880.

ALR. — Tax exemptions and the contract clause, 173 ALR 15.

48-7-102.1. Withholding exemptions; rules and regulations; submission of certificates to commissioner.

(a) The commissioner shall have the power to make and publish reasonable rules and regulations:

(1) Setting forth circumstances under which an employer shall be required to submit to the commissioner copies of withholding exemption certificates furnished to the employer by his employees;

(2) Establishing a procedure by which the commissioner may notify an employer and employee that any withholding exemption certificate which has been submitted to the commissioner shall be considered defective for purposes of computing amounts of withholding under this article;

(3) Establishing a procedure by which the commissioner may, after a withholding exemption certificate submitted to him has been determined to be defective, specify to an employer the basis upon which amounts of withholding under this article are to be computed; and

(4) Governing any and all other matters reasonably considered by the commissioner to be appropriate in addressing those matters set forth in paragraphs (1) through (3) of this subsection.

(b) For purposes of rules and regulations promulgated under the authority of subsection (a) of this Code section, the term “employer” may be defined by the commissioner to include an individual authorized by an employer to receive withholding exemption certificates, to make withholding computations, or to make payroll distributions.

(c) Nothing in this Code section shall be construed to deny additional withholding allowances to an employee who can show that he will have additional deductions because he or his spouse has attained age 65 or is blind, large itemized deductions, deductible alimony payments, moving expenses, employee business expenses, retirement contributions, net losses, or tax credits. (Code 1981, § 48-7-102.1, enacted by Ga. L. 1985, p. 1411, § 1; Ga. L. 1987, p. 191, § 6.)

Editor’s notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11,

1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were

not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Administrative rules and regulations. — Net taxable income, individual, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Chapter 560-7-4.

48-7-103. Quarterly, monthly, and jeopardy returns; tax payments; forms.

(a) Every employer whose tax withheld or required to be withheld is \$200.00 or less per month is required to file and remit payment to the department on or before the last day of the month following the end of the quarter.

(b)(1) Except as otherwise provided in subsection (a) of this Code section, every employer whose tax withheld or required to be withheld is \$50,000.00 or less in the aggregate for the lookback period is required to file and remit payment to the department on or before the fifteenth day of the following month; provided, however, that the commissioner shall be authorized to promulgate rules and regulations to permit the filing of such returns on a quarterly basis.

(2) Every employer whose tax withheld or required to be withheld exceeds \$50,000.00 in the aggregate for the lookback period must remit the withheld taxes pursuant to paragraph (3) of subsection (f) of Code Section 48-2-32 and shall file returns pursuant to paragraph (1) of this subsection.

(3) Notwithstanding any provision of this subsection to the contrary, for employers whose tax withheld or required to be withheld exceeds \$100,000.00 for the payday, the taxes must be remitted by the next banking day.

(4) For purposes of this subsection, the lookback period for each calendar year shall be the 12 month period which ended the preceding June 30.

(c) If the commissioner has reason to believe that the collection of the tax required to be paid under this article is in jeopardy for any reason, he or she may require the employer to make a return and pay the required tax at any time.

(d) The commissioner is authorized to prescribe forms and to promulgate rules and regulations which the commissioner deems necessary in order to effectuate this Code section and shall be authorized to permit the filing of returns or the remitting of payments thereunder on

an annual basis if agreed to by the taxpayer. (Ga. L. 1960, p. 7, § 5; Ga. L. 1964, p. 451, § 1; Ga. L. 1967, p. 780, §§ 1, 2; Ga. L. 1970, p. 107, § 1; Ga. L. 1972, p. 6, §§ 1, 2; Ga. L. 1973, p. 227, §§ 1, 2; Code 1933, § 91A-3904, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 1178, §§ 1, 2; Ga. L. 1991, p. 739, § 1; Ga. L. 1997, p. 734, § 6; Ga. L. 2002, p. 415, § 48; Ga. L. 2003, p. 665, § 9; Ga. L. 2005, p. 60, § 48/HB 95.)

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2003, p. 665, § 47(c), not codified by the General Assembly, provides that

this Act shall be applicable to all taxable quarters beginning on or after April 1, 2004.

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 1834, 1901 et seq., 1925.

48-7-104. Period adjustments for incorrect withholdings or payments.

(a) **In general.** If for any reason during any period of the calendar year more or less than the correct amount of the tax is withheld or more or less than the correct amount of the tax is paid to the commissioner, proper adjustment without interest may be made in any subsequent period of the same calendar year. No adjustment under this Code section shall be made with respect to an underpayment for any period after receipt from the commissioner of notice and demand for payment of the amount of the underpayment based upon an assessment. The amount of the underpayment shall be paid in accordance with the notice and demand. No adjustment under this Code section shall be made with respect to an erroneous payment or overpayment for any period after the filing of a claim for refund of the payment.

(b) Less than correct amount of tax withheld.

(1) If no tax or less than the correct amount of the tax is deducted from any wage payment and the error is ascertained prior to the filing of the return for the period in which the wages are paid, the employer shall report on the return and pay to the commissioner the correct amount of the tax required to be withheld. If the error is not ascertained until after the filing of the return for the period in which the wages are paid, the undercollection may be corrected by an adjustment on the return for any subsequent period of the same calendar year subject to the limitations noted in subsection (a) of this Code section. The amount of any undercollection adjusted in accordance with this paragraph shall be paid to the commissioner without

interest at the time prescribed for payment of the tax for the period in which the adjustment is made.

(2) If no tax or less than the correct amount of the tax is withheld from any wage payment, the employer may correct the error by deducting the amount of the undercollection from any remuneration of the employee under the employer's control after the employer ascertains the error. The deduction may be made even though the remuneration, for any reason, does not constitute wages.

(c) More than correct amount of tax withheld.

(1) If in any period more than the correct amount of tax is deducted from any wage payment, the overcollection may be paid to the employee in any period of the same calendar year. If the amount of the overcollection is so paid, the employer shall obtain and keep as part of his records the endorsed canceled check or written receipt of the employee showing the date and amount of the payment.

(2) If any overcollection in any period is paid to and receipted for by the employee prior to the time the return for the period is filed with the commissioner, the amount of the overcollection shall not be included in the return for that period.

(3) Subject to the limitations provided in subsection (a) of this Code section, if an overcollection in any period is paid to and receipted for by the employee after the return for the period is filed and the tax is paid to the commissioner, the overcollection may be corrected by an adjustment on the return for any subsequent period of the same calendar year.

(4) Every overcollection not paid to and receipted for by the employee as provided in this subsection must be reported and paid to the commissioner with the return for the period in which the overcollection is made. (Ga. L. 1960, p. 7, § 6; Code 1933, § 91A-3905, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1991, p. 739, § 2.)

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 1906, 1907.

48-7-105. Statements of wages paid and taxes withheld to employees; time; extensions.

(a) Not later than January 31 in each year and at such other dates as required by the commissioner, each person required to withhold taxes as provided in this article shall furnish each employee for whom taxes have been withheld or to whom remuneration has been paid in that

year or other period a statement of wages paid and taxes withheld. The commissioner shall provide by rule for the enforcement and implementation of this Code section.

(b) The commissioner may grant a reasonable extension of time, not exceeding 30 days, for furnishing the statement required by this Code section. (Ga. L. 1960, p. 7, § 7; Code 1933, § 91A-3906, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 75.)

48-7-106. Annual and final returns; time; extensions; return to be filed upon sale of business; withholding unpaid withholding taxes from purchase prices; penalties for violations.

(a) On or before February 28 of each year for the preceding calendar year or on or before the thirtieth day after the date on which the final payment of wages is made by an employer who has ceased to pay wages, an employer shall file with the commissioner an annual or a final return, as the case may be, on a form prescribed by the commissioner. The employer shall attach to the return copies of the statements required to be furnished under Code Section 48-7-105 for the period covered by the return, provided that in lieu of attaching copies, the commissioner may authorize the reporting of such information by electronic or magnetic media.

(b) The commissioner may grant a reasonable extension of time, not exceeding 30 days, for filing the annual or final return required by this Code section.

(c) If an employer liable for any withholding tax, interest, or penalty levied pursuant to this chapter sells out his business or stock of goods or equipment or quits the business, he shall file the final return as required in subsection (a) of this Code section. The employer's successor or assigns, if any, shall withhold a sufficient amount of the purchase money to cover the amount of the withholding taxes, interest, and penalties due and unpaid until the former owner provides a receipt from the commissioner showing that the taxes, interest, and penalties have been paid or a certificate from the commissioner stating that no withholding taxes, interest, or penalties are due.

(d) If the purchaser of a business or stock of goods or equipment fails to withhold the purchase money as required by this Code section, he shall be personally liable for the payment of the withholding tax, interest, and penalties accruing and unpaid by any former owner or assignor. The personal liability of the purchaser in such a case shall not exceed the amount of the total purchase money, but the property being transferred shall in all cases be subject to the full amount of the tax lien arising from the delinquencies of the former owner. (Ga. L. 1960, p. 7,

§ 8; Code 1933, § 91A-3907, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 21; Ga. L. 1983, p. 1834, § 9; Ga. L. 1988, p. 1380, § 3; Ga. L. 1997, p. 734, § 7.)

Editor's notes. — Ga. L. 1988, p. 1380, § 8, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval, except that the state revenue commissioner, to the extent that he determines

administratively necessary, may delay the implementation of any provision of this Act to no later than January 1, 1989."

Law reviews. — For article, "Common State Tax Pitfalls in the Acquisition or Disposition of Businesses in Georgia," see 22 Ga. St. B.J. 82 (1985).

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, § 1834.

48-7-107. Filing of returns; persons authorized to sign; verification; furnishing of required forms by commissioner; effect of failure to furnish forms.

(a) Each return shall be signed by or for the employer required to deduct and withhold the tax under this article and shall contain or be verified by a written declaration that the return is made under the penalties for false swearing. The return shall be signed and verified by the employer, by a person having control of the payment of wages for the employer, or by a person authorized to make the return for the employer. The fact that a name appears to be signed to a return shall be prima-facie evidence that the name was actually signed by the person named. The fact that a person appears to have signed for an employer shall be prima-facie evidence that the person was authorized to sign for the employer.

(b) The commissioner, as far as possible, shall furnish employers, regularly and without application, copies of the prescribed forms required to be used under this article. No employer is excused from making a return or furnishing a receipt by the fact that no forms had been furnished to the employer. (Ga. L. 1960, p. 7, § 9; Code 1933, § 91A-3908, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 1834, 1925.

48-7-108. Employer's liability.

(a) **In general.** The employer shall be liable for the payment of the tax required to be deducted and withheld under this article whether or

not the employer has deducted and withheld the tax as required under this article.

(b) **Withheld tax.** The amount of tax deducted and withheld by an employer from an employee's wages under this article shall be held to be a special fund in trust for the state; and the employer's liability for the tax shall be discharged only by payment of the tax to the commissioner. To the extent that the tax is deducted and withheld, the employer shall not be liable to any other person for the amount of the tax and shall be indemnified against the claims and demands of any person for the payment of any amounts made to the commissioner in accordance with this article.

(c) **Assessment, collection, and payment.** Except as otherwise provided by law, the liability of an employer under subsection (a) of this Code section and the amount of the fund described in subsection (b) of this Code section shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations including, but not limited to, penalties as are income taxes. In the event any employer is delinquent in payment of the tax imposed by this article, the commissioner may give notice of the amount of the delinquency by registered or certified mail or statutory overnight delivery to all persons having in their possession or under their control any credits or other personal property belonging to the employer and to all persons owing any debts to the employer at the time of receipt by them of the notice. In lieu of registered or certified mail or statutory overnight delivery, the notice may be served and the recipient may acknowledge service thereof by telephonic facsimile transmission or by other means of instantaneous electronic transmission. Thereafter, no person so notified shall transfer or make any other disposition of the credits, other personal property, or debts until the commissioner has consented to a transfer or disposition or until 30 days have elapsed after receipt of the notice. Each person so notified must advise the commissioner, within five days after receipt of the notice, of any and all credits, other personal property, or debts in such person's possession, under such person's control, or owing by such person as provided in this Code section.

(d) **Amount due on face of return.** The filing of any return by an employer in compliance with this article which shows on its face an amount due shall by operation of law constitute an assessment of the amount shown to be due on the return against the employer filing the return as of the date the return is filed. For the purposes of this Code section, an entry on a return showing the date of receipt by the department shall be prima-facie evidence that the return was actually received and filed on the date indicated. If payment is not made either with the return or on or before the due date of the return, whichever is later, the amount shown to be due shall be in default and the

commissioner may issue an execution for the collection of the amount due.

(e) **Protest of proposed assessment.** Each protest of a proposed assessment of taxes due under this article shall be filed within ten days of the notice of the proposed assessment unless the commissioner authorizes additional time. The filing of a protest and the filing of a request for additional time for the filing of a protest shall toll the period of limitations for making an assessment until the protest or request is withdrawn by the employer or denied by the commissioner. (Ga. L. 1960, p. 7, § 11; Code 1933, § 91A-3909, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 37; Ga. L. 1996, p. 780, § 2; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this

Code section shall apply with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Tax lien rendered choate. — For purposes of determining the priority between competing tax liens held by the State of Georgia and the United States, the Georgia statute which provides that a return filed by a taxpayer constitutes an assessment for the unpaid amount as shown on that return rendered Georgia's lien

choate, the return sufficiently identifying the lienor, the property, and the amount. In re Alliance Transp., Inc., 47 Bankr. 743 (Bankr. N.D. Ga. 1985).

Cited in Transamerican Ins. Co. v. State, 158 Ga. App. 45, 279 S.E.2d 238 (1981).

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 1834, 1859, 1901 et seq.

48-7-109. Effect as to employer's liability of employee's payment of tax not deducted and withheld; effect on employee's income tax liability resulting from employer's failure to withhold tax.

(a) If the employer fails to deduct and withhold the required tax in violation of this article and thereafter the income tax liability of the employee under Code Section 48-7-20, against which the amount, if withheld, would have been a credit, is paid by the employee, the tax required to be deducted and withheld shall not be collected from the employer. This Code section in no way shall relieve the employer from the liability for any penalties or additions to the tax otherwise applicable with respect to such failure.

(b) The income tax liability of an employee shall in no way be affected by the failure of his employer to withhold the tax required under this

article. (Ga. L. 1960, p. 7, § 14; Code 1933, § 91A-3912, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 39.)

48-7-109.1. Special accounting for withheld tax by employer who fails to deduct, withhold, collect, account for, or pay over taxes as required by article.

(a) Whenever an employer required to deduct and withhold taxes as required under this article fails, at the time and in the manner prescribed by law or regulation, to deduct and withhold, collect, account truthfully for, or pay over to the commissioner the amount of taxes due as required by this article, upon being notified of the failure by the commissioner by notice served upon him, personally or by registered or certified mail or statutory overnight delivery addressed to his last known address, he shall comply with the requirement of special accounting as set forth in subsection (b) of this Code section.

(b) Beginning at the time of service upon him of the notice provided for in subsection (a) of this Code section, the employer shall deduct and withhold the tax required under this article and, not later than the second banking day after any amount of such tax is deducted and withheld, shall:

(1) Deposit the tax in a special and separate account in any state or national bank designated as a state depository and keep the amount of such taxes in such account until payment over to the commissioner or to the department. Each such account shall be a special fund in trust for the state payable only to the commissioner or the department; or

(2) Purchase a postal money order or other certified or bankable paper for such amount, payable only to the commissioner or the department. The order or paper shall be handled and dealt with under such rules and regulations as the commissioner may prescribe.

(c) Whenever the commissioner is satisfied that the special accounting prescribed under subsections (a) and (b) of this Code section is no longer necessary to effect future compliance with law or regulations, he may cancel the notice requiring compliance with subsection (b) of this Code section at such time and under such conditions as he may specify. (Code 1933, § 91A-3911.1, enacted by Ga. L. 1981, p. 1857, § 38; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this

Code section shall apply with respect to notices delivered on or after July 1, 2000.

48-7-110. Effect of employer's voluntary compliance with requirements of article as to admission of doing business in state.

The fact of an employer's voluntary compliance with the requirements of this article shall not of itself constitute any admission that the employer is doing business within this state for any other purpose, but it shall be taken as conferring jurisdiction upon this state for purposes of collecting amounts withheld under this article. (Ga. L. 1960, p. 7, § 2; Code 1933, § 91A-3910, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

C.J.S. — 84 C.J.S., Taxation, §§ 166 et seq., 219, 220.

48-7-111. Employer's records; contents; period of preservation.

(a) Each employer required to deduct and withhold taxes under this article shall keep accurate records of all remuneration paid to his employees, including, but not limited to, remuneration paid in forms other than cash. The records shall contain the information required by rules issued by the commissioner.

(b) The records required to be kept pursuant to subsection (a) of this Code section and records relating to refunds shall be preserved and maintained for a period of at least four years after the date the tax to which they relate becomes due or the date the tax is paid, whichever is later. (Ga. L. 1960, p. 7, § 12; Code 1933, § 91A-3911, enacted by Ga. L. 1978, p. 309, § 2.)

48-7-112. Employee refunds and credits; procedures.

(a) **Credit.** The amount of tax deducted or withheld during any calendar year with respect to an employee shall be allowed as a credit to the employee against his income tax liability under Code Section 48-7-20 for the taxable year beginning in the calendar year.

(b) **Overpayment.**

(1) To the extent that the credit provided in subsection (a) of this Code section together with other credits allowed by law is in excess of the employee's income tax liability for the taxable year as shown on an income tax return filed by the employee for that year, the overpayment shall be considered as taxes erroneously paid and shall be credited or refunded as provided in this Code section. An overpayment shall be credited to the person's estimated income tax liability for the succeeding taxable year unless the person claims a refund for

the overpayment. The commissioner may consider any final return showing an overpayment as a claim for refund per se. An overpayment shall bear no interest if credit is given for the overpayment. Amounts refunded as overpayments shall bear interest at the rate provided in Code Section 48-2-35 but only after 90 days from the filing date of the final return showing the overpayment or from the due date of the final return, whichever is later.

(2) A refund shall be deemed to have been made when the commissioner issues a check for the refund payable to the claimant. The record in the office of the commissioner as to the time of issuance of the refund shall be prima-facie evidence of the time the refund is made. Whenever a check is issued for a refund claimed or shown due on a final return and no separate claim has been filed for the refund, the check shall be sent by first-class mail to the claimant at the address shown on the return in an envelope instructing return of the envelope if not delivered in ten days. The commissioner shall publish in print or electronically the names of claimants whose checks are returned. If a refund check is not claimed in accordance with the commissioner's instructions within 90 days after the publication, the refund claim covered by the check shall be deemed to have been abandoned. Any refund check which is not presented for payment within 180 days after the date of the check shall be void and the refund claim covered by the check shall be deemed to have been abandoned. When any claim for refund has been abandoned, any funds which may have been designated or set aside for its payment shall be returned to the Office of the State Treasurer and the claimant's right to the refund shall be barred. This subsection shall not apply to a claim for refund filed with, but separately from, a final return under general law and shall not affect the period of limitations allowed by general law applicable to a claim for refund when filed separately from a final return.

(c) **Limitation on refund or credit.** No refund or credit shall be allowed unless the employee attaches to and files with his final income tax return a copy of the employer's receipt as provided for in Code Section 48-7-105 for the amount of tax deducted and withheld from his wages for that taxable year. If an employee submits satisfactory proof that his employer deducted and withheld taxes from his wages and that the employer failed or refused to furnish the employee with the prescribed receipt, the proof so furnished may be taken to establish a credit or refund under this Code section.

(d) **Setoffs.** Notwithstanding any other provision of this subsection, a refund or a portion thereof may be transferred to a claimant agency to set off a debt due and owing to the claimant agency as provided in Article 7 of this chapter. When any action pursuant to Article 7 of this

chapter is taken, that article shall govern all aspects of right and entitlement to refunds covered thereunder. Funds transferred to claimant agencies shall not bear interest. If there is a final determination that the taxpayer alleged to be a debtor is entitled to receive all or part of the funds transferred to a claimant agency, the amount to which the taxpayer is entitled shall bear interest at the rate provided in Code Section 48-2-35 beginning 30 days after the final determination. (Ga. L. 1960, p. 7, § 15; Ga. L. 1961, p. 53, § 1; Ga. L. 1975, p. 156, § 2; Code 1933, § 91A-3913, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 1555, § 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 2000, p. 777, § 2; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 863, § 2/SB 296.)

OPINIONS OF THE ATTORNEY GENERAL

No recovery of excess withholdings when return not filed within three years. — Overpayment of income taxes resulting from excess withholdings may not be recovered under normal circumstances by filing a claim for refund or by obtaining credit against liability of different years, when the taxpayer does not file an income tax return until more than three years after the date of payment. 1976 Op. Att'y Gen. No. 76-54.

Rules and regulations as to refund checks not presented within 180 days. — In the absence of statutory authority to the contrary, rules and regulations providing for stop payments to be issued after 180 days and the return of funds to the general treasury would be deemed reasonable. 1973 Op. Att'y Gen. No. 73-103.

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, § 1882 et seq.

ALR. — Right to interest on tax refund or credit in absence of specific controlling statute, 76 ALR 1012; 112 ALR 1183; 88 ALR2d 823.

When right to refund of state or local

taxes accrues, within statute limiting time for applying for refund, 46 ALR2d 1350.

Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund, 1 ALR6th 1.

48-7-113. Employer refunds and credits; procedure; claim for abatement of overassessment.

If more than the correct amount of tax, penalty, or interest is paid to the commissioner by an employer, the employer may file a claim for refund of the overpayment or may take credit for the overpayment against the tax reported on any quarterly return which the employer subsequently files. A refund or credit of the overpayment, however, shall be made only to the extent that the amount of overpayment exceeds the tax actually withheld and the penalty and interest on the tax. If more than the correct amount of tax, penalty, or interest is assessed and is not paid to the commissioner, the employer against whom the assessment is made may file a claim for abatement of the

overassessment. (Ga. L. 1960, p. 7, § 16; Code 1933, § 91A-3914, enacted by Ga. L. 1978, p. 309, § 2.)

Law reviews. — For note as to the voluntary payment doctrine in Georgia, see 16 Ga. L. Rev. 893 (1982).

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, § 1925 et seq.

ALR. — Right to interest on tax refund or credit in absence of specific controlling statute, 76 ALR 1012; 112 ALR 1183; 88 ALR2d 823.

When right to refund of state or local

taxes accrues, within statute limiting time for applying for refund, 46 ALR2d 1350.

Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund, 1 ALR6th 1.

48-7-114. Estimated income tax by individuals; procedures.

(a) **“Estimated tax” defined.** For purposes of this Code section, the term “estimated tax” means the amount which the individual estimates as the amount of income tax imposed by Code Section 48-7-20 less the amount which the individual estimates as the sum of credits allowable by law against the tax.

(b) **Requirement of estimated tax.** Except as otherwise provided in subsection (d) of this Code section, every resident individual and every taxable nonresident individual shall file his or her estimated tax for the current taxable year if he or she can be reasonably expected to be required to file a Georgia income tax return for the current taxable year and his or her gross income can reasonably be expected to:

(1) Include more than \$1,000.00 from sources other than wages as defined in paragraph (10) of Code Section 48-7-100; and

(2) Exceed:

(A) One thousand five hundred dollars if the individual is single or the individual is married and not living with his or her spouse or the individual is married and expects to claim only \$1,500.00 of the marital exemption; or

(B) Three thousand dollars if the individual is married and living with his or her spouse and expects to claim the full marital exemption.

(c) **Return as estimated tax.** If on or before January 31 of the succeeding taxable year or, in the case of an individual referred to in subsection (b) of Code Section 48-7-115, relating to income from farming and fishing, on or before March 1 of the succeeding taxable year, the taxpayer files a return for the taxable year for which the estimated tax

is required and pays in full the amount computed on the return as payable and the estimate is not required to be filed during the taxable year but is required to be filed on or before January 15, then the return shall be considered as the estimate.

(d) **Exemptions.** This Code section shall not apply to an individual in a given tax year if:

(1) The sum of the allowable credits shown on the individual's income tax return for the tax year exceeds the individual's tax liability shown on the return before the tax liability is reduced by the amount of the allowable credits; and

(2) The individual reasonably expected at the time estimated tax was otherwise required to be filed with respect to the tax year that the conditions of paragraph (1) of this subsection would be met for the tax year.

(e)(1) **Applicability to fiduciaries.** With respect to taxable years beginning on or after January 1, 1988, fiduciaries shall be subject to all requirements of this article in the same manner as individuals, except as provided in paragraph (2) of this subsection.

(2) This Code section shall not apply with respect to any taxable year ending before the date two years after the date of the decedent's death in the case of:

(A) The estate of such decedent; or

(B) A testamentary trust as defined in IRC Section 6654(l)(2)(B). (Ga. L. 1960, p. 7, § 18; Code 1933, § 91A-3915, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 76; Ga. L. 1980, p. 459, §§ 1, 2; Ga. L. 1987, p. 191, § 7; Ga. L. 1988, p. 1380, § 4; Ga. L. 1988, p. 1389, § 1; Ga. L. 2012, p. 796, § 1/HB 965.)

The 2012 amendment, effective May 1, 2012, in subsection (b), inserted "or her" throughout, and inserted "or she" in the introductory paragraph; redesignated former subsection (e) as present paragraph (e)(1); added "except as provided in paragraph (2) of this subsection" at the end of paragraph (e)(1); and added paragraph (e)(2).

Code Commission notes. — Two 1988 Acts amended this Code section and pursuant to Code Section 28-9-5, subsections (a) — (d) are set out as designated by Ga. L. 1988, p. 1380, and subsection (f), as added by Ga. L. 1988, p. 1389, is redesignated as subsection (e).

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assem-

bly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same

dates as they become effective for federal purposes.

Ga. L. 1988, p. 1389, § 2, not codified by the General Assembly, provided that no

civil or criminal liability under that Act shall be incurred with respect to any act or failure to act occurring on or before July 1, 1988.

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, § 1834 et seq.

48-7-115. Time for filing estimated income tax by individuals.

(a) **In general.** Estimated tax required by Code Section 48-7-114 from an individual not regarded as a farmer or fisherman shall be filed with the commissioner on or before April 15 of the taxable year, except that if the requirements of subsection (b) of Code Section 48-7-114 are first met:

(1) On or after April 1 and before June 1 of the taxable year, the estimated tax shall be filed on or before June 15 of the taxable year;

(2) On or after June 1 and before September 1 of the taxable year, the estimated tax shall be filed on or before September 15 of the taxable year; or

(3) On or after September 1 of the taxable year, the estimated tax shall be filed on or before January 15 of the succeeding year.

(b) **Farmers and fishermen.** Estimated tax required by Code Section 48-7-114 from individuals whose estimated gross income from farming or fishing for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year may be filed, in lieu of the time prescribed in subsection (a) of this Code section, at any time on or before January 15 of the succeeding taxable year.

(c) **Short taxable years.** In the application of this Code section to a taxable year beginning on any date other than January 1, there shall be substituted for the months specified in this Code section the months which correspond to the months specified in this Code section. (Ga. L. 1960, p. 7, § 19; Code 1933, § 91A-3917, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 77; Ga. L. 1988, p. 1380, § 4.)

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 183, 184.

48-7-116. Installment payments of estimated tax by individuals.

(a) **In general.** The amount of estimated tax required to be paid by an individual shall be paid as follows:

(1) If the estimate is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid on or before April 15. The second and third installments shall be paid on or before June 15 and September 15, respectively, of the taxable year. The fourth installment shall be paid on January 15 of the succeeding year;

(2) If the estimate is filed after April 15 and not after June 15 of the taxable year and is not required by subsection (a) of Code Section 48-7-115 to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the estimate, the second installment shall be paid on September 15 of the taxable year, and the third installment shall be paid on January 15 of the succeeding year;

(3) If the estimate is filed after June 15 and not after September 15 of the taxable year and is not required by subsection (a) of Code Section 48-7-115 to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the estimate and the second installment shall be paid on January 15 of the succeeding year;

(4) If the estimate is filed after September 15 of the taxable year and is not required by subsection (a) of Code Section 48-7-115 to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the estimate; or

(5) If the estimate is filed after the time prescribed in subsection (a) of Code Section 48-7-115 including, but not limited to, cases in which an extension of time for filing has been granted, paragraphs (2), (3), and (4) of this subsection shall not apply, and all installments of estimated tax which would have been payable on or before such time if the estimate had been filed within the time prescribed in subsection (a) of Code Section 48-7-115 shall be paid at the time of the filing. The remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the estimate had been so filed.

(b) **Farmers and fishermen.** If an individual referred to in subsection (b) of Code Section 48-7-115, relating to income from farming and fishing, files estimated tax after September 15 of the taxable year and on or before January 15 of the succeeding year, the estimated tax shall be paid in full at the time of the filing.

(c) **Fiscal years.** In the application of this Code section to a taxable year beginning on any date other than January 1, there shall be substituted for the months specified in this Code section the months which correspond to the months specified in this Code section.

(d) **Installments paid in advance.** At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment. (Ga. L. 1960, p. 7, § 20; Code 1933, § 91A-3919, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 78; Ga. L. 1988, p. 1380, § 4.)

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, § 1925.

48-7-117. Estimated income tax by corporations.

(a) **“Estimated tax” defined.** For purposes of this Code section, the term “estimated tax” means the amount which the corporation estimates as the amount of income tax imposed by Code Section 48-7-21 less the amount which the corporation estimates as the sum of credits allowable by law against the tax.

(b) **In general.** Every domestic and foreign corporation subject to taxation under Code Section 48-7-21 shall pay estimated tax for the taxable year if its net income for the taxable year as defined in Code Section 48-7-31 can reasonably be expected to exceed \$25,000.00. (Ga. L. 1963, p. 18, § 1; Code 1933, § 91A-3916, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1988, p. 1380, § 4.)

RESEARCH REFERENCES

ALR. — Income of subsidiary as taxable to it or to parent corporation, 10 ALR2d 576.

48-7-118. Time for filing declarations of estimated income tax by corporations.

Reserved. Repealed by Ga. L. 1988, p. 1380, § 4, effective April 11, 1988.

48-7-119. Installment payments of estimated tax by corporations.

If the requirements of Code Section 48-7-117 are first met as shown in the left-hand column of the following table, then the estimated tax shall be due as shown in the remaining columns:

The following percentages of the estimated tax shall be paid on the fifteenth day of the:

	fourth month of the taxable <u>year</u>	sixth month of the taxable <u>year</u>	ninth month of the taxable <u>year</u>	twelfth month of the taxable <u>year</u>
Before the first day of the fourth month of the taxable year	25	25	25	25
After the last day of the third month and before the first day of the sixth month of the taxable year		33 1/3	33 1/3	33 1/3
After the last day of the fifth month and before the first day of the ninth month of the taxable year			50	50
After the last day of the eighth month and before the first day of the twelfth month of the taxable year				100

(Ga. L. 1963, p. 18, § 3; Code 1933, § 91A-3920, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1988, p. 1380, § 4; Ga. L. 1989, p. 1110, § 1.)

Editor's notes. — Ga. L. 1989, p. 1110, § 2, not codified by the General Assembly, provides that the amendments to this Code section by the Act shall apply to taxable years beginning on or after January 1 of the calendar year in which the Act takes effect.

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, § 1925.

48-7-120. Failure by taxpayer to pay estimated income tax.

(a) **Addition to the tax.** In case of any underpayment of estimated tax by a taxpayer, except as provided in subsection (d) of this Code section, an amount computed at the rate of 9 percent per annum upon the amount of the underpayment, determined under subsection (b) of

this Code section, for the period of the underpayment, determined under subsection (c) of this Code section, shall be added to the tax under Code Section 48-7-21 for the taxable year.

(b) **Amount of underpayment.** For purposes of subsection (a) of this Code section, the amount of the underpayment shall be the lesser of the excess of paragraph (1) or paragraph (2) of this subsection over paragraph (3) of this subsection when those paragraphs are as follows:

(1) The amount of the installment required to be paid if the estimated tax were equal to 70 percent ($66 \frac{2}{3}$ percent in the case of individuals referred to in subsection (b) of Code Section 48-7-115, relating to income from farming and fishing) of the tax shown on the return for the taxable year or, if no return was filed, 70 percent ($66 \frac{2}{3}$ percent in the case of individuals referred to in subsection (b) of Code Section 48-7-115, relating to income from farming and fishing) of the tax for the year;

(2) The amount of the installment required to be paid if the estimated tax were equal to 100 percent of the tax shown on the return for the preceding taxable year, as long as the preceding taxable year was a taxable year of 12 months, and a tax return was filed for such preceding taxable year; and

(3) Any amount of the installment paid on or before the last date prescribed for payment.

(c) **Period of underpayment.** The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

(1) The fifteenth day of the fourth month following the close of the taxable year; or

(2) With respect to any portion of the underpayment, the date on which the portion is paid. For the purposes of this paragraph, a payment of estimated tax on the installment date or, in the case of a corporation, on the fifteenth day of the first month of the succeeding taxable year shall be considered a payment of any previous underpayment only to the extent the payment exceeds the amount of the installment determined under paragraph (1) of subsection (b) of this Code section for the installment date or, in the case of a corporation, for the fifteenth day of the first month of the succeeding taxable year.

(d) **Exception.** Notwithstanding subsections (a) through (c) of this Code section, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds the amount which would have been required to be paid on or before the last date

prescribed for the payment if the estimated tax were the least of the following:

(1) The tax shown on the return for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and the preceding year was a taxable year of 12 months;

(2) An amount equal to the tax computed at the rates applicable to the taxable year on the basis of the taxpayer's status with respect to Code Section 48-7-26 for the taxable year, but otherwise on the basis of the facts shown on the return of the taxpayer for, and under the law applicable to, the preceding taxable year; or

(3) An amount equal to 70 percent, or $66\frac{2}{3}$ percent in the case of individuals referred to in subsection (b) of Code Section 48-7-115, relating to income from farming and fishing, of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this paragraph, the taxable income shall be placed on an annualized basis by:

(A) Multiplying by 12 or, in the case of a taxable year of less than 12 months, by the number of months in the taxable year the taxable income (computed without deduction of personal exemptions) for the months in the taxable year ending before the month in which the installment is required to be paid;

(B) Dividing the resulting amount by the number of months in the taxable year ending before the month in which the installment date falls; and

(C) Deducting from the amount the deductions for any personal exemptions allowable for the taxable year, such personal exemptions to be determined as of the last date prescribed for payment of the installment.

(4) In the case of an individual, an amount equal to 90 percent of the tax computed at the rates applicable to the taxable year on the basis of the actual taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

(e) **Application to individual.** For purposes of applying this Code section in the case of an individual:

(1) The estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under subsection (a) of Code Section 48-7-112; and

(2) The amount of the credit allowed under subsection (a) of Code Section 48-7-112 for the taxable year shall be deemed a payment of

estimated tax, and an equal part of the amount shall be deemed paid on each installment date as determined under Code Section 48-7-116 for the taxable year. If the taxpayer establishes the dates on which all amounts were actually withheld, the amounts so withheld shall be deemed payments of estimated tax on the dates on which the amounts were actually withheld.

(f) **“Tax” defined.** For purposes of subsections (b) and (d) of this Code section, the term “tax” means the tax imposed by Code Section 48-7-20 reduced by the credits against the tax allowed by law other than the credit against tax provided by subsection (a) of Code Section 48-7-112, relating to tax withheld on wages. (Ga. L. 1960, p. 7, § 22; Ga. L. 1963, p. 18, § 5; Ga. L. 1975, p. 156, §§ 3, 4; Code 1933, § 91A-3921, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, §§ 79, 80; Ga. L. 2003, p. 428, § 1.)

Editor’s notes. — Ga. L. 2003, p. 428, § 2, not codified by the General Assembly, provides that this Act “shall be applicable

to all taxable years beginning on or after January 1, 2003.”

OPINIONS OF THE ATTORNEY GENERAL

Basis for computation of addition to tax. — When taxpayer has filed a return, the addition to the tax imposed by this section should be computed on the

basis of the tax shown on the taxpayer’s return and not with reference to any deficiency assessed against the taxpayer. 1967 Op. Att’y Gen. No. 67-401.

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 1882 et seq., 1925 et seq.

48-7-121. Credit of estimated tax payment; credit or refund of estimated tax overpayment; rate of interest on refund; time.

(a) As used in this Code section, the term:

(1) “Final return” means the original income tax return filed by the taxpayer for the tax year or an amended return filed on or before the due date of the return without extensions. Such term does not include any other amended income tax return for the period or an estimated tax return.

(2) “Income tax liability for a taxable year” means the taxpayer’s income tax liability as calculated under Code Section 48-7-20 or 48-7-21 for the taxable year reduced (but not below zero) by all nonrefundable credits to which the taxpayer is entitled. Nonrefundable credits include any credit that is limited by the taxpayer’s income tax liability or some percentage thereof.

(3) "Other credits allowed by law" means only those income tax credits that are refundable, such as the credit for income tax withholding and the credit allowed by Code Section 48-7-28.1. Refundable credits do not include any credit that is limited by the taxpayer's income tax liability or some percentage thereof.

(b) The amount of estimated tax paid under this article for any taxable year shall be allowed as a credit to the taxpayer against the taxpayer's income tax liability under Code Section 48-7-20 or 48-7-21 for the taxable year.

(c) To the extent that the estimated tax credit, together with other credits allowed by law, is in excess of the taxpayer's income tax liability for a taxable year as shown on a final return filed by the taxpayer for that year, the overpayment shall be considered as taxes erroneously paid and shall be credited or refunded as provided in this subsection. The overpayment shall be credited to the taxpayer's estimated income tax liability for the succeeding taxable year unless the taxpayer claims a refund for the overpayment. The commissioner may consider any final return showing an overpayment as a claim for refund per se. An overpayment shall bear no interest if credit is given for the overpayment. Amounts refunded as overpayments shall bear interest at the rate provided in Code Section 48-2-35 but only after 90 days from the filing date of the final return showing the overpayment or 90 days from the due date of the final return, whichever is later. (Ga. L. 1960, p. 7, § 23; Ga. L. 1963, p. 18, § 6; Ga. L. 1975, p. 156, § 5; Code 1933, § 91A-3922, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2000, p. 777, § 3; Ga. L. 2005, p. 159, § 21/HB 488.)

Editor's notes. — Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 451 et seq., 515 et seq.

C.J.S. — 85 C.J.S., Taxation, §§ 1882 et seq., 1909, 1910, 1925.

ALR. — Retrospective operation of statute enlarging or shortening period of claim of tax refund, 163 ALR 778.

Effect of delay in receipt or negotiation of refund check in determining right to interest under § 6611 of the Internal Revenue Code (26 USCA § 6611), 145 ALR Fed. 437.

48-7-122. Nondeductibility to employer of tax deducted and withheld.

The tax deducted and withheld under this article shall not be allowed as a deduction to the employer. (Ga. L. 1960, p. 7, § 28; Code 1933,

§ 91A-3924, enacted by Ga. L. 1978, p. 309, § 4; Ga. L. 1988, p. 1380, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 435 et seq.

48-7-123. Disregard of fractional parts of dollar in allowance of credits or refunds or in assessment or collection of deficiencies or underpayments.

The commissioner may disregard a fractional part of a dollar in the allowance of any amount as a credit or refund or in the assessment or collection of any amount as a deficiency or underpayment. (Ga. L. 1960, p. 7, § 24; Code 1933, § 91A-3927, enacted by Ga. L. 1978, p. 309, § 2.)

48-7-124. Reciprocal arrangements for relief of taxpayers from operation of income tax payment laws of more than one jurisdiction.

In the administration and enforcement of this article with respect to a taxpayer whose income may be subject to the current income tax payment laws of two or more tax jurisdictions, including this state, the commissioner may make reciprocal arrangements with the tax authorities of the other jurisdictions for the relief of the taxpayer from the multiple burden imposed by the operation of several current income tax payment laws. (Ga. L. 1960, p. 7, § 29; Code 1933, § 91A-3925, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

ALR. — Reciprocity provision of income tax law, 152 ALR 748.

48-7-125. Application of article to short taxable years.

The application of this article to taxable years of less than 12 months shall be in accordance with regulations prescribed by the commissioner. (Ga. L. 1960, p. 7, § 20; Code 1933, § 91A-3923, enacted by Ga. L. 1978, p. 309, § 2.)

48-7-126. Assessable penalties and interest.

(a) **Assessable as tax.** The liabilities specified in this Code section shall be paid upon notice and demand by the commissioner and shall be assessed and collected in the same manner as are income taxes. Except as otherwise provided by law, any reference to “tax” imposed under this

article shall be deemed also to refer to the liabilities specified in this Code section.

(b) **Failure to withhold tax.** Any person required to deduct and withhold the tax imposed by Code Section 48-7-101 who, with respect to each wage payment to each employee, fails to deduct and withhold the required tax shall pay a penalty of \$10.00 unless it is shown that the failure is due to reasonable cause and not to willful neglect. The penalty shall not exceed \$10.00 quarterly for each employee with respect to whose wages the failure occurred.

(c) **Failure to file employer return or pay tax.** If an employer fails to file within the prescribed time a return required under this article or fails to pay when due the tax required under this article, or both, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be assessed a penalty of \$25.00 against any employer for each such failure plus 5 percent of the amount of the tax if the failure is for not more than one month and an additional 5 percent for each additional month or fraction of a month during which the failure continues. The penalty shall not exceed \$25.00 plus 25 percent in the aggregate of the tax and in no event shall the penalty be less than \$25.00. If any check or money order in payment of any amount is not paid when duly presented for payment, it shall constitute a failure to pay under this subsection.

(d) **Fraudulent withholding receipt.** Any person required to furnish an employee with a withholding receipt required by Code Section 48-7-105 who willfully furnishes a false or fraudulent receipt shall for each such receipt be subject to a penalty of \$50.00.

(e) **Interest.** If the tax imposed by this article on employers is not paid on the date prescribed for payment in Code Section 48-7-103 and is not adjusted as authorized in Code Section 48-7-104, interest on the unpaid amount at the rate specified in Code Section 48-2-40 shall be paid for the period from the due date of the tax, irrespective of any extension of time for payment, until the date of payment. The interest shall be assessed and collected as part of the tax.

(f) **Failure of corporation to pay estimated tax.** If a corporation fails to timely pay estimated tax, a penalty shall be assessed against the corporation in an amount equal to 5 percent of the Georgia income tax imposed on the corporation for the taxable year. (Ga. L. 1960, p. 7, § 30; Ga. L. 1963, p. 18, § 7; Ga. L. 1975, p. 156, § 6; Code 1933, § 91A-3926, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 23; Ga. L. 1988, p. 1380, § 6; Ga. L. 1991, p. 739, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 512 et seq.

C.J.S. — 85 C.J.S., Taxation, §§ 1834, 1926 et seq.

ALR. — Construction and application of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 ALR 107.

48-7-127. (For effective date of repeal, see note.) Other violations of article; penalties.

(a) Willful failure to withhold tax.

(1) It shall be unlawful for any person who is required to deduct and withhold the tax imposed by Code Section 48-7-101 willfully to fail, in making payments of wages for any payroll period, to deduct and withhold the required tax from the wages paid to any employee.

(2) In addition to any other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor for each such payroll period.

(b) Willful failure to pay over withheld tax.

(1) It shall be unlawful for any person who has deducted and withheld any amount from an employee's wages as a tax required under Code Section 48-7-101 willfully to fail, within the prescribed time, to pay the amount over to the commissioner as required under Code Section 48-7-103.

(2) In addition to any other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(3) For purposes of this subsection, a lack of funds existing immediately after the payment of wages, whether or not created by the payment of the wages, shall not negate willfulness.

(c) Willful failure to file return or pay estimated tax.

(1) It shall be unlawful for any person who is required under this article or regulations pursuant to this article to file any return of any tax or pay estimated tax or to keep any record, willfully to fail to file the return or pay the tax or to keep the records at the time or times required by law or regulation.

(2) In addition to any other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(d) False exemption certificate or failure to supply information.

(1) It shall be unlawful for any individual who is required to supply information to his employer under Code Section 48-7-102 willfully to

supply false or fraudulent information or willfully to fail to supply information under Code Section 48-7-102 which would require an increase in the tax to be withheld under Code Section 48-7-102.

(2) In lieu of any penalty otherwise provided, any individual who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(e) False withholding receipts or failure to furnish receipts.

(1) It shall be unlawful for any person who is required to furnish to an employee the receipt prescribed in Code Section 48-7-105 willfully to furnish a false or fraudulent receipt or willfully to fail to furnish the receipt at the time, in the manner, and showing the information required by law or regulation.

(2) In lieu of any other penalty provided by law, except the penalty provided in subsection (d) of Code Section 48-7-126, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor for each such receipt or failure.

(f) Attempts to evade or defeat tax.

(1) It shall be unlawful for any person willfully to attempt in any manner to evade or defeat any tax imposed under this article or the payment of any tax imposed under this article.

(2) In addition to any other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(g) Willful failure to pay corporate estimated tax.

(1) It shall be unlawful for any officer, director, or employee of a corporation required under this article or regulations pursuant to this article to file estimated tax willfully to be responsible for the failure of the corporation to pay any installment of estimated tax due.

(2) In addition to any other penalties provided by law, any individual who violates any provision of paragraph (1) of this subsection shall be guilty of a misdemeanor for each such failure.

(h) Violation of notice of delinquency.

(1) It shall be unlawful for any person to violate the provisions of subsection (c) of Code Section 48-7-108 with respect to notice of delinquency.

(2) Any person who violates paragraph (1) of this subsection with respect to notice of delinquency shall be guilty of a misdemeanor.

(i) Failure to comply with notice of special accounting.

(1) It shall be unlawful for any person to fail to comply with a notice of the commissioner requiring compliance with subsection (b)

of Code Section 48-7-109.1, providing for special accounting under the current income tax payment law.

(2) In addition to other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor unless there was a reasonable doubt as to whether the law required collection of the tax or as to who was required by law to collect the tax or the failure to comply was due to circumstances beyond his control.

(3) For the purposes of this subsection, a lack of funds existing immediately after the payment of wages, whether or not created by the payment of such wages, shall not be considered to be circumstances beyond the control of a person.

(j) (Repealed effective July 1, 2014.) False claims of independent contractor status.

(1) It shall be unlawful for any person knowingly to coerce, induce, or threaten an individual falsely to declare himself or herself to be an independent contractor or falsely to claim that an individual employed by such person is an independent contractor in order to avoid or evade the withholding or payment of taxes required under this title.

(2) In addition to any other penalties provided by law, any person who violates paragraph (1) of this subsection in connection with contracts with the state or any political subdivision thereof or any authority of the state or a political subdivision thereof, upon conviction, shall be subject to a fine equal to the total amount of tax owed for the first offense. For the second offense, upon conviction, the person shall be subject to a fine equal to two times the total amount of tax owed. For third and subsequent offenses, upon conviction, the person shall be subject to a fine equal to four times the total amount of tax owed. A violation of paragraph (1) of this subsection with regard to a contract with the state or any political subdivision thereof or any authority of the state or any political subdivision thereof shall constitute only one offense, regardless of the number of individuals improperly coerced, induced, or threatened to declare falsely to be independent contractors or falsely claimed to be independent contractors in connection with such contract. (Ga. L. 1960, p. 7, § 31; Ga. L. 1963, p. 18, § 8; Code 1933, § 91A-9933, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 10; Ga. L. 1988, p. 1380, § 7; Ga. L. 2004, p. 416, § 1; Ga. L. 2004, p. 487, § 1.)

Editor's notes. — Ga. L. 2004, p. 487, § 3, not codified by the General Assembly, provides for the repeal of subsection (j), effective July 1, 2014.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 512 et seq. seq., 115, 123 et seq. 84 C.J.S., Taxation, §§ 542, 547. 85 C.J.S., Taxation, §§ 1715, C.J.S. — 37 C.J.S., Fraud, §§ 12 et 1724 et seq., 1785.

48-7-128. Withholding tax on sale or transfer of real property and associated tangible personal property by nonresidents.

(a) As used in this Code section, the term “nonresident of Georgia” shall include individuals, trusts, partnerships, corporations, and unincorporated organizations. Any seller or transferor who meets all of the following conditions and who provides the buyer or transferee with an affidavit signed under oath swearing or affirming that the following conditions are met will be deemed a resident for purposes of this Code section:

(1) The seller or transferor has filed Georgia income tax returns or appropriate extensions have been received for the two income tax years immediately preceding the year of sale;

(2) The seller or transferor is in business in Georgia and will continue substantially the same business in Georgia after the sale or the seller or transferor has real property remaining in the state at the time of closing of equal or greater value than the withholding tax liability as measured by the 100 percent property tax assessment of such remaining property;

(3) The seller or transferor will report the sale on a Georgia income tax return for the current year and file it by its due date; and

(4) If the seller or transferor is a corporation or limited partnership, it is registered to do business in Georgia.

(b)(1) Except as otherwise provided in this Code section, in the case of any sale or transfer of real property and related tangible personal property located in Georgia by a nonresident of Georgia, the buyer or transferee shall be required to withhold and remit to the commissioner on forms provided by the commissioner a withholding tax equal to 3 percent of the purchase price or consideration paid for the sale or transfer; provided, however, that if the amount required to be withheld pursuant to this subsection exceeds the net proceeds payable to the seller or transferor, the buyer or transferee shall withhold and pay over to the commissioner only the net proceeds otherwise payable to the seller or transferor. Any buyer or transferee who fails to withhold such amount shall be personally liable for the amount of such tax.

(2) The liability imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner’s

delegate and shall be assessed and collected in the same manner as all other withholding taxes imposed by this article.

(3) The person or entity identified as the seller on the settlement statement shall be considered the seller for all purposes regarding this Code section, including, but not limited to, executing and delivering to the buyer or transferee all forms or other documents incident to determining the appropriate amount of tax to be withheld or the appropriate amount exempt from withholding requirements.

(c) If the seller or transferor determines that the amount required to be withheld pursuant to paragraph (1) of subsection (b) of this Code section will result in excess withholding on any gain required to be recognized from the sale, the seller or transferor may provide the buyer or transferee with an affidavit signed under oath swearing or affirming to the amount of the gain required to be recognized from the sale, and the buyer or transferee shall withhold 3 percent of the amount of the gain required to be recognized, if any, stated in the affidavit rather than as provided in paragraph (1) of subsection (b) of this Code section. If, however, the amount required to be withheld pursuant to this subsection exceeds the net proceeds payable to the seller or transferor, the buyer or transferee shall withhold and pay over to the commissioner only the net proceeds otherwise payable to the seller or transferor.

(d) Subsection (b) of this Code section shall not apply where:

(1) The real property being sold or transferred is a principal residence of the seller or transferor within the meaning of Section 1034 of the Internal Revenue Code;

(2) The seller or transferor is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration; or

(3) The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of Georgia, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or a private mortgage insurance company.

The commissioner may by regulation set a purchase price amount below which no withholding is required.

(e)(1) Unless otherwise provided, if the seller or transferor is a partnership or Subchapter "S" corporation or other unincorporated organization which certifies to the buyer or transferee that a composite return is being filed on behalf of the nonresident partners, shareholders, or members and that the partnership, Subchapter "S" corporation, or unincorporated organization remits the tax on the gain on behalf of the nonresident partners, shareholders, or mem-

bers, the buyer or transferee shall not be required to withhold as provided in this Code section. Any nonresident partner, shareholder, or member who falsely certifies that a composite return is being filed on behalf of such partner, shareholder, or member shall be liable for a penalty in the amount of \$500.00 or 10 percent of the amount required to be withheld, whichever is greater.

(2) The penalty imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as the withholding tax imposed by this article.

(f) Every buyer or transferee of real property located in Georgia who is required to deduct and withhold the withholding tax imposed by subsection (b) of this Code section shall file the required return and remit payment to the department on or before the last day of the calendar month following the calendar month within which the sale or transfer giving rise to the withholding tax occurred. (Code 1981, § 48-7-128, enacted by Ga. L. 1993, p. 768, § 2; Ga. L. 2011, p. 674, § 2-1/HB 117.)

The 2011 amendment, effective May 13, 2011, added paragraph (b)(3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, the Code Section 48-7-128 enacted by Ga. L. 1993, p. 597, § 3, was redesignated as Code Section 48-7-129, since Ga. L. 1993, p. 768, § 2, also enacted a Code Section 48-7-128.

Editor's notes. — Ga. L. 1993, p. 768, § 3, not codified by the General Assembly, makes this Code section applicable with

respect to any sale or transfer occurring on or after January 1, 1994.

Administrative rules and regulations. — Returns and collections, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, Chapter 560-7-8.

Law reviews. — For note on 1993 enactment of this Code section, see 10 Ga. St. U.L. Rev. 218 (1993).

48-7-129. Withholding tax on distributions to nonresident members of partnerships, Subchapter "S" corporations, and limited liability companies.

(a)(1) Any partnership, Subchapter "S" corporation, or limited liability company which owns property or does business within this state shall be subject to a withholding tax. Such tax shall be withheld from a nonresident member's share of taxable income sourced to this state, whether distributed or not, except as provided in subsection (c) of Code Section 48-7-24. For purposes of this Code section, the term "taxable income sourced to this state" means the entity's income allocated or apportioned to Georgia pursuant to Code Section 48-7-31 or as otherwise provided by law.

(2) The amount of tax to be withheld for each nonresident member shall be determined by multiplying the nonresident member's share

of the taxable income sourced to this state by a rate of 4 percent. To the extent that the partnership, Subchapter "S" corporation, or limited liability company remits withholding tax during the course of the tax year which exceeds the Georgia income tax liability of a nonresident member, that member shall be entitled to a refund of the excess withholding at the end of the taxable year.

(3) Any partnership, Subchapter "S" corporation, or limited liability company which fails to withhold and pay over to the commissioner any amount required to be withheld under this Code section may be liable for a penalty equal to 25 percent of the amount not withheld and paid over. Any penalty imposed under this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as the withholding taxes imposed by this article.

(4) The partnership, Subchapter "S" corporation, or limited liability company and its members shall be jointly and severally liable for the withholding tax liability imposed under this subsection and shall be assessed accordingly.

(b)(1) As an alternative to the withholding requirement imposed by subsection (a) of this Code section, the commissioner may allow the filing of composite returns by partnerships, Subchapter "S" corporations, or limited liability companies on behalf of their nonresident members and may provide for the requirements of filing composite returns by regulation. For purposes of this subsection, the term "composite return" means a return filed by a partnership, Subchapter "S" corporation, or limited liability company on behalf of all of its nonresident members which reports and remits the Georgia income tax of the nonresident members.

(2) Where a partnership, Subchapter "S" corporation, or limited liability company chooses to file a composite return and meets all the requirements of filing such composite return, such partnership, Subchapter "S" corporation, or limited liability company shall be exempt from the withholding requirements imposed under subsection (a) of this Code section.

(3) The liability imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as all other withholding taxes imposed by this article.

(c)(1) If a partnership, Subchapter "S" corporation, or limited liability company fails to remit withholding for a nonresident member and the commissioner determines that such failure is due to a false representation that the member is a resident of Georgia, there shall be imposed in addition to the tax a penalty of the greater of \$250.00

or 5 percent of the amount which should have been withheld. The partnership, Subchapter "S" corporation, or limited liability company and the nonresident member shall be jointly and severally liable for any such penalty imposed.

(2) The penalty imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as withholding tax imposed by this article.

(d)(1) Every partnership, Subchapter "S" corporation, or limited liability company which is required to deduct and withhold the withholding tax imposed by subsection (a) of this Code section shall remit such tax and file the required return on a form approved by the commissioner. Taxes withheld on a nonresident member's share of the taxable income sourced to this state shall be due on or before the due date for filing the income tax return for the partnership, Subchapter "S" corporation, or limited liability company as prescribed in subsection (a) of Code Section 48-7-56 without regard to any extension of time for filing such income tax return.

(2) Every partnership, Subchapter "S" corporation, or limited liability company required to deduct and withhold tax under this article shall furnish a written statement or form approved by the commissioner to each nonresident member. Such statement or form shall include the name and federal tax identification number of the partnership, Subchapter "S" corporation, or limited liability company, the member's name and federal tax identification number, the total amount of the nonresident member's share of the taxable income sourced to this state during the taxable year, the total amount of tax deducted and withheld with respect to such member during the year, and such other information as the commissioner shall prescribe. Such statement or form shall be furnished to the nonresident member and filed in duplicate with the commissioner on or before the earlier of the date the income tax return is filed or the due date for filing the income tax return of such partnership, Subchapter "S" corporation, or limited liability company as prescribed in subsection (a) of Code Section 48-7-56 without regard to any extension of time for filing such income tax return.

(3) Any partnership, Subchapter "S" corporation, or limited liability company required to furnish a nonresident member with the written statement required by this subsection which furnishes a false or fraudulent statement or which fails to furnish the statement shall be subject to the penalty contained in subsection (d) of Code Section 48-7-126. The penalty imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as the withholding tax imposed by this article.

(e)(1) Notwithstanding subsection (a) of this Code section, a partnership, Subchapter “S” corporation, or limited liability company shall not be required to deduct and withhold tax for a nonresident member if:

(A) A composite return is filed on behalf of nonresident members pursuant to the requirements of filing such composite returns as set by the commissioner;

(B) The aggregate amount of a nonresident member’s share of the taxable income sourced to this state is less than \$1,000.00;

(C) A federally chartered Subchapter “S” corporation fails to meet the requirements of subparagraph (b)(7)(B) of Code Section 48-7-21 and is therefore required to remit corporate income tax;

(D) Compliance will cause undue hardship on the partnership, Subchapter “S” corporation, or limited liability company, provided that no partnership, Subchapter “S” corporation, or limited liability company shall be exempt from complying with the withholding requirements imposed under subsection (a) of this Code section unless the commissioner approves in writing a written petition for exemption from the withholding requirements based on undue hardship. The commissioner may prescribe the form and contents of such a petition and specify standards for when a partnership, Subchapter “S” corporation, or limited liability company shall not be required to comply with the withholding requirements due to undue hardship;

(E) The partnership is a publicly traded partnership as defined in Section 7704 of the Internal Revenue Code of 1986; or

(F) The member meets one of the exceptions as set forth in the rules and regulations promulgated by the commissioner.

(2) Where a nonresident member’s share of the taxable income sourced to this state is subject to withholding under other provisions of Georgia law, such amount shall not be subject to withholding under subsection (a) of this Code section.

(f) The commissioner shall be authorized to prescribe forms and to promulgate rules and regulations which the commissioner deems necessary in order to effectuate this Code section. (Code 1981, § 48-7-129, enacted by Ga. L. 1993, p. 597, § 3; Ga. L. 1997, p. 450, § 3; Ga. L. 2008, p. 898, § 12/HB 1151; Ga. L. 2012, p. 796, § 2/HB 965.)

The 2012 amendment, effective May 1, 2012, in paragraph (a)(1), substituted “a nonresident member’s share of taxable income sourced to this state, whether distributed or not” for “any distributions paid

or any distributions credited but not paid to members who are not residents of Georgia”, in the first sentence and added the second sentence; substituted “nonresident member’s share of the taxable income

sourced to this state” for “distribution paid or the distribution credited but not paid” in the first sentence of paragraph (a)(2); substituted a period for “as follows:” at the end of paragraph (d)(1); deleted subparagraph (d)(1)(A), which read: “Taxes deducted and withheld on distributions paid by a partnership, Subchapter ‘S’ corporation, or limited liability company to members who are nonresidents shall be due on or before the last day of the calendar month following the calendar month within which the distribution was paid; and”; deleted the subparagraph (d)(1)(B) designation and substituted “Taxes withheld on a nonresident member’s share of the taxable income sourced to this state” for “Taxes deducted and withheld on distributions credited but not paid by a partnership, Supchapter ‘S’ corporation, or limited liability company to members who are nonresidents”; substituted “the nonresident member’s share of the taxable income sourced to this state” for “distributions paid to the member” in the second sentence of paragraph (d)(2); substituted “amount of a nonresident member’s share of the taxable income sourced to this state” for “annual distributions made to a member are” in subparagraph (e)(1)(B); and substituted the present provisions of paragraph (e)(2) for the former provisions, which read: “Where distributions paid or distributions credited but not paid, or both, to nonresident members of partnerships, Subchapter ‘S’ corporations, or limited liability companies are subject to withholding under other provisions of Georgia law or represent a return of such member’s investment or a return of capi-

tal, such distributions shall not be subject to withholding under subsection (a) of this Code section.” See editor’s note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, the Code Section 48-7-128 enacted by Ga. L. 1993, p. 597, § 3, was redesignated as Code Section 48-7-129, since Ga. L. 1993, p. 768, § 2, also enacted a Code Section 48-7-128.

Editor’s notes. — Ga. L. 1993, p. 597, § 4, not codified by the General Assembly, makes this Code section applicable with respect to any distribution paid or credited after January 1, 1994.

Ga. L. 1997, p. 450, § 4, not codified by the General Assembly, makes the 1997 amendment to this Code section applicable to all taxable years beginning on or after January 1, 1997.

Ga. L. 2008, p. 898, § 13/HB 1151, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2008.

Ga. L. 2012, p. 796, § 3/HB 965, not codified by the General Assembly, provides that the 2012 amendment shall be applicable to all taxable years beginning on or after January 1, 2012.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 271 (1997). For article, “Post-Creation Checklist for Georgia Business Entities,” see 9 Ga. St. B.J. 24 (2004).

For note on 1993 enactment of this Code section, see 10 Ga. St. U.L. Rev. 218 (1993).

RESEARCH REFERENCES

ALR. — State income tax treatment of S corporations and their shareholders, 118 ALR5th 597.

ARTICLE 6

LOCAL INCOME TAXES

Editor’s notes. — Ga. L. 2010, p. 156, § 1/HB 984, effective May 20, 2010, repealed the Code sections formerly codified

at this article and enacted the current article. The former article consisted of Code Sections 48-7-140 through 48-7-149, relat-

ing to local income taxes, and was based on Code 1933, §§ 91A-4001—91A-4010, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1974, p. 506, §§ 1-5, 7-9, 11; Ga. L. 1995, p. 714, § 3.

Ga. L. 2010, p. 156, § 3(b)/HB 984, not codified by the General Assembly, provides that: “Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general

law as it existed immediately prior to the effective date of this Act.” This Act became effective May 20, 2010.

Ga. L. 2010, p. 156, § 3(c)/HB 984, not codified by the General Assembly, provides that: “This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act.” This Act became effective May 20, 2010.

48-7-140. Prohibition of local income taxes.

On or after May 20, 2010; there shall be no local income taxes whatsoever levied or collected by any political subdivision of this state, and no local income tax returns shall be required. (Code 1981, § 48-7-140, enacted by Ga. L. 2010, p. 156, § 2/HB 984.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, “On or after May 20, 2010,” was substituted for

“On or after the effective date of this Code section” at the beginning of this Code section.

RESEARCH REFERENCES

ALR. — Validity of municipal ordinance imposing income tax or license upon non-

resident in taxing jurisdiction (commuter tax), 48 ALR3d 343.

ARTICLE 7

SETOFF DEBT COLLECTION

48-7-160. Purposes.

The purpose of this article is to establish a policy and to provide a system whereby all claimant agencies of this state in conjunction with the department shall cooperate in identifying debtors who owe money to the state through its various claimant agencies and who qualify for refunds from the department. It is also the purpose of this article to establish procedures for setting off against any such refund the sum of any debt owed to the state. It is the intent of the General Assembly that this article be liberally construed to effectuate these purposes. (Code 1933, § 91A-4101, enacted by Ga. L. 1980, p. 1555, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Statute of limitations for recovering overpayments of unemployment benefits pursuant to O.C.G.A. § 34-8-159, either

by an independent action or by intercepting state income tax refunds pursuant to O.C.G.A. § 48-7-160, is four years, and

the statute begins to run from the date the money is due. 1989 Op. Att'y Gen. 89-36.

48-7-161. Definitions.

As used in this article, the term:

(1) "Claimant agency" means and includes, in the order of priority set forth below:

(A) The Department of Human Services and the Department of Behavioral Health and Developmental Disabilities with respect to collection of debts under Article 1 of Chapter 11 of Title 19, Code Section 49-4-15, and Chapter 9 of Title 37;

(B) The Georgia Student Finance Authority with respect to the collection of debts arising under Part 3 of Article 7 of Chapter 3 of Title 20;

(C) The Georgia Higher Education Assistance Corporation with respect to the collection of debts arising under Part 2 of Article 7 of Chapter 3 of Title 20;

(D) The Georgia Board for Physician Workforce with respect to the collection of debts arising under Part 6 of Article 7 of Chapter 3 of Title 20;

(E) The Department of Labor with respect to the collection of debts arising under Code Sections 34-8-254 and 34-8-255 and Article 5 of Chapter 8 of Title 34, with the exception of Code Sections 34-8-158 through 34-8-161; provided, however, that the Department of Labor establishes that the debtor has been afforded required due process rights by such Department of Labor with respect to the debt and all reasonable collection efforts have been exhausted;

(F) The Department of Corrections with respect to probation fees arising under Code Section 42-8-34 and restitution or reparation ordered by a court as a part of the sentence imposed on a person convicted of a crime who is in the legal custody of the department;

(G) The State Board of Pardons and Paroles with respect to restitution imposed on a person convicted of a crime and subject to the jurisdiction of the board; and

(H) The Department of Juvenile Justice with respect to restitution imposed on a juvenile for a delinquent act which would constitute a crime if committed by an adult.

(2) "Debt" means any liquidated sum due and owing any claimant agency, which sum has accrued through contract, subrogation, tort, or

operation of law regardless of whether there is an outstanding judgment for the sum, any sum which is due and owing any person and is enforceable by the Department of Human Services pursuant to subsection (b) of Code Section 19-11-8, or any sum of restitution or reparation due pursuant to a sentence imposed on a person convicted of a crime and sentenced to restitution or reparation and probation.

(3) “Debtor” means any individual owing money to or having a delinquent account with any claimant agency, which obligation has not been adjudicated as satisfied by court order, set aside by court order, or discharged in bankruptcy.

(4) “Refund” means the Georgia income tax refund which the department determines to be due any individual taxpayer. (Code 1933, § 91A-4102, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 1985, p. 785, § 10; Ga. L. 1986, p. 825, § 1; Ga. L. 1988, p. 937, § 1; Ga. L. 1991, p. 139, § 2; Ga. L. 2000, p. 136, § 48; Ga. L. 2004, p. 148, § 1; Ga. L. 2005, p. 88, § 7/HB 172; Ga. L. 2009, p. 453, § 2-21/HB 228; Ga. L. 2011, p. 459, § 5/HB 509.)

The 2011 amendment, effective July 1, 2011, substituted “Georgia Board for Physician Workforce” for “State Medical Education Board” in subparagraph (1)(D).

Editor’s notes. — Ga. L. 2005, p. 88, § 1/HB 172, not codified by the General

Assembly, provides that: “This Act shall be known and may be cited as the ‘Crime Victims Restitution Act of 2005.’”

Law reviews. — For annual survey of state and local taxation, see 38 Mercer L. Rev. 337 (1986).

48-7-162. Collection remedy additional.

The collection remedy authorized by this article is in addition to and not in substitution for any other remedy available by law. (Code 1933, § 91A-4103, enacted by Ga. L. 1980, p. 1555, § 1.)

48-7-163. Collection of debts through setoff; minimum debt; procedure; exceptions; request for setoff.

(a) A claimant agency may submit any debts in excess of \$25.00 owed in accordance with Code Section 48-7-161 to the department for collection through setoff under the procedure established by this article, except in cases where the validity of the debt is legitimately in dispute, an alternate means of collection is pending and believed to be adequate, or such collection would result in a loss of federal funds or federal assistance.

(b) Upon request of a claimant agency, the department shall set off any refund as defined in Code Section 48-7-161 against the debt certified by the claimant agency as provided in this article. (Code 1933, § 91A-4104, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2004, p. 148, § 2.)

48-7-164. Procedure for setoffs and notification of taxpayers; certification of debts; transfer of refunds to claimant agency; notice to taxpayers; transferred funds in escrow account; costs borne by claimant agency.

(a) Within a time frame specified by the department, a claimant agency seeking to collect a debt through setoff shall supply the information necessary to identify each debtor whose refund is sought to be set off and shall certify the amount of the debt or debts owed by each debtor.

(b) If a debtor identified by a claimant agency is determined by the department to be entitled to a refund of at least \$25.00, the department shall transfer an amount equal to the refund owed, not to exceed the amount of the claimed debt certified, to the claimant agency. When the refund owed exceeds the claimed debt, the department shall send the excess amount to the debtor within a reasonable time after the excess is determined.

(c) At the time of the transfer of funds to a claimant agency pursuant to subsection (b) of this Code section, the department shall notify the taxpayer or taxpayers whose refund is sought to be set off that the transfer has been made. The notice shall clearly set forth the name of the debtor, the manner in which the debt arose, the amount of the claimed debt, the transfer of funds to the claimant agency pursuant to subsection (b) of this Code section and the intention to set off the refund against the debt, the amount of the refund in excess of the claimed debt, the taxpayer's opportunity to give written notice to contest the setoff within 30 days of the date of mailing of the notice, the name and mailing address of the claimant agency to which the application for a hearing must be sent, and the fact that failure to apply for a hearing in writing within the 30 day period will be deemed a waiver of the opportunity to contest the setoff. In the case of a joint return, the notice shall also state the name of any taxpayer named in the return against whom no debt is claimed, the fact that a debt is not claimed against such taxpayer, the fact that such taxpayer is entitled to receive a refund if it is due him regardless of the debt asserted against his spouse, and that in order to obtain a refund due him such taxpayer must apply in writing for a hearing with the claimant agency named in the notice within 30 days of the date of the mailing of the notice. If a taxpayer fails to apply in writing for a hearing within 30 days of the mailing of the notice, he will have waived his opportunity to contest the setoff.

(d) Upon receipt of funds transferred from the department pursuant to subsection (b) of this Code section, the claimant agency shall deposit and hold the funds in an escrow account until a final determination of the validity of the debt.

(e) The claimant agency shall pay the department for all costs incurred by the department in setting off debts in the manner provided in this article. (Code 1933, § 91A-4105, enacted by Ga. L. 1980, p. 1555, § 1.)

48-7-165. Hearing procedure; adjustments of incorrect debts; nonavailability of hearings before department; issues previously litigated; appeals.

(a)(1) If the claimant agency receives written application contesting the setoff or the sum upon which the setoff is based, it shall grant a hearing to the taxpayer to determine whether the setoff is proper or the sum is valid according to the procedures established under Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” If the sum asserted as due and owing is not correct, an adjustment of the claimed debt shall be made.

(2) A request for a hearing pursuant to the Internal Revenue Code to contest the collection of past-due support may be consolidated with a request for a hearing under paragraph (1) of this subsection. If the sum asserted as due and owing is not correct, an adjustment of the claimed debt shall be made.

(b) The hearing established by subsection (a) of this Code section shall be in lieu of a hearing before the department to determine the validity of the debt or the propriety of the setoff.

(c) No issues which have been previously litigated shall be considered at the hearing.

(d) Appeals from actions taken at the hearing allowed under this Code section shall be in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1933, § 91A-4106, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 1985, p. 785, § 11; Ga. L. 1986, p. 10, § 48; Ga. L. 2012, p. 318, § 11/HB 100.)

The 2012 amendment, effective January 1, 2013, deleted “pursuant to Code Section 50-13-12; and the department shall not grant a hearing” following “before the department” near the middle of subsection (b).

Editor’s notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the Gen-

eral Assembly, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 70 (2012).

48-7-166. Final determination of debt due; transfer from escrow account to credit of debtor's account of debt due; notice of setoff; contents; refund of excess.

(a) Upon final determination of the amount of the debt due and owing by means of the hearing provided by Code Section 48-7-165 or by the taxpayer's default through failure to comply with subsection (c) of Code Section 48-7-164, the claimant agency shall remove the amount of the debt due and owing from the escrow account established pursuant to Code Section 48-7-164 and shall credit the amount to the debtor's obligation.

(b) Upon transfer of the debt due and owing from the escrow account to the credit of the debtor's account, the claimant agency shall notify the debtor in writing of the finalization of the setoff. The notice shall include a final accounting of the refund which was set off, including the amount of the refund to which the debtor was entitled prior to setoff, the amount of the debt due and owing, the amount of the refund in excess of the debt which has been returned to the debtor by the department pursuant to subsection (b) of Code Section 48-7-164, and the amount of the funds transferred to the claimant agency pursuant to Code Section 48-7-164 in excess of the debt finally determined to be due and owing at a hearing held pursuant to Code Section 48-7-165, if such a hearing was held. At such time, the claimant agency shall refund to the debtor the amount of the claimed debt originally certified and transferred to it by the department in excess of the amount of debt finally found to be due and owing. (Code 1933, § 91A-4107, enacted by Ga. L. 1980, p. 1555, § 1.)

48-7-167. Effect of setoff on refund.

When the setoff authorized by this article is exercised, the refund which is set off shall be deemed granted. (Code 1933, § 91A-4111, enacted by Ga. L. 1980, p. 1555, § 1.)

48-7-168. Priority of department over claimant agencies for collection by setoff.

The department has priority pursuant to subsection (c) of Code Section 48-2-35 over every claimant agency for collection by setoff under this article. (Code 1933, § 91A-4108, enacted by Ga. L. 1980, p. 1555, § 1.)

48-7-169. Authorization of commissioner to prescribe forms and promulgate rules and regulations.

The commissioner is authorized to prescribe forms and to promulgate rules and regulations which he deems necessary in order to effectuate

this article. (Code 1933, § 91A-4109, enacted by Ga. L. 1980, p. 1555, § 1.)

48-7-170. Confidentiality exemption; providing of necessary information by commissioner to claimant agencies; non-disclosure of information by employees or prior employees of agencies; penalties.

(a) Notwithstanding Code Section 48-7-60, which prohibits disclosure by the department of the contents of taxpayer records or information, and notwithstanding any other confidentiality statute, the commissioner may provide to a claimant agency all information necessary to accomplish and effectuate the intent of this article.

(b) The information obtained by a claimant agency from the department in accordance with this article shall retain its confidentiality and shall only be used by a claimant agency in the pursuit of its debt collection duties and practices. Any employee or prior employee of any claimant agency who unlawfully discloses any such information for any other purpose, except as otherwise specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized disclosure of confidential information by an agent or employee of the department. (Code 1933, § 91A-4110, enacted by Ga. L. 1980, p. 1555, § 1.)

CHAPTER 7A

TAX CREDITS

Sec.

48-7A-1. Legislative findings and purposes [Repealed].

48-7A-2. "Dependent" defined.

48-7A-3. Persons entitled to claim tax credit; tax credits schedule; tax

credit claimed against tax liability; period for filing claims for credit; applicability to food stamp recipients; authority of commissioner.

Editor's notes. — Ga. L. 1991, p. 87, § 5(b), not codified by the General Assembly, provides that this chapter is applicable to all taxable years beginning on or after January 1, 1992.

Law reviews. — For note on 1991 enactment of this chapter, see 8 Ga. St. U.L. Rev. 190 (1992).

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, § 2186 et seq.

48-7A-1. Legislative findings and purposes.

Reserved. Repealed by Ga. L. 2010, p. 1163, § 4/HB 1069, effective June 4, 2010.

Editor's notes. — This Code section was based on Ga. L. 1991, p. 87, § 1.

Ga. L. 2010, p. 1163, § 7/HB 1069, not codified by the General Assembly, pro-

vides that the repeal and reservation of this Code section shall be applicable to all taxable years beginning on or after January 1, 2010.

48-7A-2. "Dependent" defined.

As used in this chapter, the term "dependent" means:

- (1) The taxpayer;
- (2) The spouse of the taxpayer; and
- (3) A natural or legally adopted child of the taxpayer. (Code 1981, § 48-7A-2, enacted by Ga. L. 1991, p. 87, § 1; Ga. L. 1992, p. 6, § 48.)

48-7A-3. Persons entitled to claim tax credit; tax credits schedule; tax credit claimed against tax liability; period for filing claims for credit; applicability to food stamp recipients; authority of commissioner.

(a) Except as otherwise provided in subsection (e) of this Code section, each resident taxpayer who files an individual income tax

return for a taxable year and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Georgia individual income tax purposes may claim a tax credit against the resident taxpayer’s individual income tax liability for the taxable year for which the individual income tax return is being filed; provided that:

- (1) A husband and wife filing a joint return shall each be deemed a dependent for purposes of such joint return; and
- (2) A husband and wife filing separate returns for a taxable year for which a joint return could have been filed by them shall claim only the tax credit to which they would have been entitled had a joint return been filed.
- (b) Each taxpayer may claim a tax credit in the amount indicated for each adjusted gross income bracket as shown in the schedule below multiplied by the number of dependents which the taxpayer is entitled to claim. Each taxpayer 65 years of age or over may claim double the tax credit.

TAX CREDIT SCHEDULE

<u>Adjusted Gross Income</u>	<u>Tax Credit</u>
Under \$6,000.00	\$ 26.00
6,000.00 but not more than 7,999.00	20.00
8,000.00 but not more than 9,999.00	14.00
10,000.00 but not more than 14,999.00	8.00
15,000.00 but not more than 19,999.00	5.00

(c) The tax credit claimed by a resident taxpayer pursuant to this Code section shall be deductible from the resident taxpayer’s individual income tax liability, if any, for the tax year in which it is properly claimed; provided, however, that in no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer’s income tax liability. Any unused credit amount shall not be allowed to be carried forward to the taxpayer’s succeeding years’ tax liability. No such credit shall be allowed the taxpayer against prior years’ tax liability.

(d) All claims for a tax credit under this Code section, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with this subsection shall constitute a waiver of the right to claim the credit.

(e) Any individual who receives a food stamp allotment for all or any part of a taxable year shall not be entitled to claim a credit under this Code section for that taxable year.

(e.1) Any individual incarcerated or confined in any city, county, municipal, state, or federal penal or correctional institution for all or any part of a taxable year shall not be entitled to claim a credit under this Code section for that taxable year.

(f) The commissioner shall be authorized by rule and regulation to provide for the proper administration of this Code section. (Code 1981, § 48-7A-3, enacted by Ga. L. 1991, p. 87, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 2004, p. 410, § 7; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 1163, § 5/HB 1069.)

Editor's notes. — Ga. L. 2004, p. 410, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2004.'"

Ga. L. 2010, p. 1163, § 7/HB 1069, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2010.

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

Sec.		Sec.	
	lent to sale at retail; no duplication of tax.		debt deduction or refund nonassignable; allocation of bad debts.
48-8-35.	Addition of tax by dealer to sale price or charge; amount of tax as debt owed by purchaser to dealer; liability of dealer for failure to collect.	48-8-46.	Final return and payment upon sale of or quitting business; withholding of sufficient amount of purchase money by successor; effect of failure to withhold.
48-8-36.	Prohibition of advertising by dealer of assumption of payment of tax; exception; liability of dealer.	48-8-47.	Notice by commissioner to persons holding credits of or owing debts to delinquent dealers; duty of such persons.
48-8-37.	Violation of Code Section 48-8-36; penalty.	48-8-48.	Violation of Code Sections 48-8-46 and 48-8-47; penalty.
48-8-38.	Burden of proof on seller as to taxability; certificate that property purchased for resale; requirements of purchaser having certificate; contents; proof of claimed exemption.	48-8-49.	Dealers' returns as to gross proceeds of sales and purchases; returns based on estimated tax liability; returns as to rentals or leases; granting of extensions.
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48-8-40.	Effect of sales from commingled goods when certificate given for portion of goods.	48-8-51.	Extension of time for making returns; limit; conditions for valid extensions; remittance under extension; interest; estimate when no return or false return filed; presumption of correctness.
48-8-41.	Bringing action raising issue of taxability; copy of initial pleading to Attorney General; filing of acknowledgment of pleading in court; judgment void absent filed acknowledgment.	48-8-52.	Dealers' duty to keep records of sales, purchases, and invoices of goods; examination by commissioner; assessment and collection when no or incorrect invoice produced; presumption of correctness; fixing of actual consideration for lease or rental; collection.
48-8-42.	Credit for tax when like tax paid in another state; procedure; proof of payment; payment of difference when like tax less than tax imposed by article; no credit absent reciprocity; exception.	48-8-53.	Duty of wholesalers and jobbers to keep records; contents; inspection by commissioner.
48-8-43.	Disposition of taxes collected in excess of 4 percent.	48-8-54.	Failure of wholesalers or jobbers to keep and allow inspection of records under Code Section 48-8-53; penalty.
48-8-44.	Payment of tax when used articles taken as credit on sale of new and used articles.	48-8-55.	Appearance before commissioner of dealer who fails to file return or files false or fraudulent return; notice; presumption of correctness of commissioner's assessment.
48-8-45.	Reporting cash and credit sales; change of basis of accounting; payment of tax at time of filing return under cash basis of accounting; deduction of bad debts under accrual basis of accounting; availability of refund; bad	48-8-56.	Period of delinquency of un-

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	paid taxes; issuance of fi. fa. for collection.		events constituting engaging in business by nonresident dealer; venue; perfection of service of process.
48-8-57.	Furnishing of bond by chronically delinquent or defaulting dealers; amount; sale at public auction of securities for collection of taxes due; notice to dealer or depositor by mail or personal service.	48-8-66.	Penalties for failure to file return or make payment in full; exception for providential cause; penalty for willful failure to file return or for false or fraudulent return.
48-8-58.	Property sold returned to dealer by purchaser; "return allowance" defined; credit for tax payments; deduction of return allowance; claim for refund of tax credit by retired dealer; forms; effect of failure to secure forms.	48-8-67.	Distribution of certain unidentifiable sales and use tax proceeds; limitations; powers and duties of state revenue commissioner.
48-8-59.	Dealer's certificate of registration; one license for all operations of single business in state; application for certificate; contents; conditions for valid certificate; renewal fee after revocation or suspension of certificate.	48-8-68.	Relief from liability in certain circumstances for failure to collect tax at new rate.
48-8-60.	Engaging in business as seller without certificate of registration required by Code Section 48-8-59; penalty.	48-8-69.	Purchases from printed catalogs; local jurisdiction boundary changes.
48-8-61.	Application for certificate of registration by importing dealers; filing of returns and payment of use tax on imported tangible personal property.	48-8-70.	Determination of ZIP Code designation applicable to particular purchases; rebuttable presumption of seller's due diligence.
48-8-62.	Revocation or suspension of certificate of registration for violation of article or regulation; notice; hearing.	48-8-71.	Immunity from liability for reliance upon erroneous data provided by the state on tax rates, local boundaries, and taxing jurisdiction assignments.
48-8-63.	"Nonresident subcontractor" defined; payment of tax by contractors; liability of seller; withholding of payments due subcontractor; rate; bond; exemption of property unconsumed; property deemed consumed; property of the state or of the United States.	48-8-72.	Over-collected sales or use tax.
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		48-8-76.	Compliance with terms of Streamlined Sales and Use Tax Agreement; relief from certain obligations.
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ware by department; relief from liability.

Article 2

Joint County and Municipal Sales and Use Tax

- 48-8-80. "Qualified municipality" defined.
- 48-8-81. Creation of special districts.
- 48-8-82. Authorization of counties and municipalities to impose joint sales and use tax; rate; applicability to sales of motor fuels and food and beverages.
- 48-8-82.1. One-year increase in tax rate [Repealed].
- 48-8-83. Special districts where joint tax to be levied.
- 48-8-84. Resolution by governing authorities of counties and municipalities in special districts imposing tax; time.
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- 48-8-102. Creation of special districts; levying of tax; use of proceeds of tax; restriction on levying taxes.
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48-8-252. Tax paid in another jurisdiction.
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48-8-254. "Building and construction materials" defined; inapplicability of tax to certain sales or uses of building and construction materials.
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- 48-8-270. Short title.
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term; sales and use tax refund; administrative regulations.
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48-8-275. Authority of Department of Community Affairs to enter into agreements with approved companies; required terms and provisions of agreements.
48-8-276. Compliance subject to review by Department of Community Affairs; failure to abide by terms of agreement.
48-8-277. Transfer of rights, duties, and obligations to successor company.
48-8-278. Article inapplicable to sales tax levied for educational purposes [Repealed].

Cross references. — Excise taxes for importation, and manufacture of distilled spirits, § 3-4-60 et seq.

Editor's notes. — Ga. L. 2008, p. 889, § 1, sought to enact Article 5 of Chapter 8 of this title, consisting of Code Sections 48-8-220 and 48-8-221, regarding additional funding sources for transportation. Section 3 of that Act provided that Article 5 would have become effective January 1, 2009, but only upon ratification at the November, 2008, state-wide general election of a resolution amending the Constitution authorizing such funding. No such

resolution was adopted by the General Assembly and, consequently, the referendum did not occur and Article 5 was not given effect.

Law reviews. — For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998). For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004). For article, "Curing the Structural Defect in State Tax Systems: Expanding the Tax Base to Include Services," see 61 Mercer L. Rev. 491 (2010).

RESEARCH REFERENCES

ALR. — Retailer's or buyer's defenses against exaction of penalties for failure to file, or deficiency in, state or local sales tax return, 20 ALR4th 952.

State or local sales, use, or privilege tax on sales of, or revenues from sales of, advertising space or services, 40 ALR4th 1114.

ARTICLE 1

STATE SALES AND USE TAX

Administrative rules and regulations. — Administrative rules and regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Sales and Use Tax Division, Chapter 560-12-1.

Forms (Forms applicable to sales and use tax), Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Sales and Use Tax Division, Chapter 560-12-3.

Special county tax, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Sales and Use Tax Division, Chapter 560-12-6.

Law reviews. — For article, "The

Scope and Effect of the Georgia Retail Sales and Use Tax, Its Weaknesses and Needed Changes," see 17 Ga. B.J. 319 (1955). For article, "Georgia Retailers' and Consumers' Sales and Use Tax Act," see 9 Ga. St. B.J. 37 (1972). For article, "Georgia Sales and Use Tax From Viewpoint of Practicing Attorney," see 9 Ga. St. B.J. 45 (1972).

For note, "The State Retail Sales Tax: A Critical Re-Examination of Underlying Policy," see 1 Ga. L. Rev. 503 (1967).

For comment on *Colonial Stores v. Undercoffer*, 223 Ga. 105, 153 S.E.2d 549 (1967), see 4 Ga. St. B.J. 132 (1967).

JUDICIAL DECISIONS

Distinction between sales within and outside state comports with equal protection requirements. — Distinction made by Ga. L. 1951, p. 360 as to sales for resale or for shipment out of the state and those made other than for resale and for delivery within the state for storage are valid classifications and do not violate the equal protection provisions of the federal and state constitutions. *Orkin Exterminating Co. v. Blackmon*, 229 Ga. 146, 190 S.E.2d 43 (1972).

No intent to differentiate between legal and illegal sales. — Nothing in Ga. L. 1951, p. 360 indicates any intention on the part of the legislature to differentiate between legal and illegal sales, and the law's general language should not be limited to legal sales only merely because the law does not specifically tax illegal sales by referring to those sales as such. *Undercoffer v. VFW Post 4625*, 110 Ga. App. 711, 139 S.E.2d 776 (1964), later appeal, 112 Ga. App. 27, 143 S.E.2d 684 (1965).

Georgia's sales tax collection procedures do not amount to a denial of due process of law although a hearing is not provided for the taxpayer prior to the taxpayer either having to post a bond or pay the tax. *Gainesville-Hall County Economic Opportunity Org., Inc. v. Blackmon*, 233 Ga. 507, 212 S.E.2d 341 (1975).

Seizure of property before issuance of fi. fa. comports with due process. — Failure to give notice and an opportunity to be heard prior to issuance of a tax fi. fa. and a subsequent levy on back accounts does not violate the due process clause of the Fourteenth Amendment because seizure of property by the government for the collection of taxes constitutes one of those extraordinary situations justifying postponement of notice and hearing until after the property has been seized. *Fowler v. Strickland*, 243 Ga. 30, 252 S.E.2d 459 (1979), cert. denied, 444 U.S. 827, 100 S. Ct. 53, 62 L. Ed. 2d 35 (1979).

Purpose. — Purpose of Ga. L. 1951, p. 360 is to bring about payment of taxes to and receipt of taxes by the State of Georgia. *Drake v. Thyer Mfg. Corp.*, 105 Ga. App. 20, 123 S.E.2d 457 (1961).

Scope of article. — Ga. L. 1978, p. 309 deals only with retail sales and with means to preclude avoidance of the tax by provisions for a use tax when enforcement directly against the retail sale is not practicable. *Law Lincoln Mercury, Inc. v. Strickland*, 246 Ga. 237, 271 S.E.2d 152 (1980).

"User" and "consumer" synonymous. — In the context of Ga. L. 1951, p. 360, the words "user" and "consumer" are synonymous. *J.W. Meadors & Co. v. State*, 89 Ga. App. 583, 80 S.E.2d 86 (1954).

Ga. L. 1951, p. 360 is designed to tax sales at retail. Superior Type, Inc. v. Williams, 98 Ga. App. 89, 105 S.E.2d 14 (1958).

Tax is for privilege of doing retail business. — Tax imposed by Ga. L. 1951, p. 360 is on the retailer for the privilege and license of engaging in the retail business in this state. Oxford v. J.D. Jewell, Inc., 215 Ga. 616, 112 S.E.2d 601 (1960).

Intent is to levy tax against dealers. — Intent and purpose of the General Assembly in Ga. L. 1951, p. 360 taken as a whole is to levy the tax against the dealer. The responsibility of collecting the tax on each sale from the purchaser and remitting to the commissioner is solely upon the dealer; if the dealer fails to collect the tax from the purchaser the dealer has to pay the tax. Williams v. Bear's Den, Inc., 214 Ga. 240, 104 S.E.2d 230 (1958).

Whose liability extends beyond that of agent for collection. — When a retail dealer has collected the tax from the customers under Ga. L. 1951, p. 360, the dealer's duty or obligation to the state is not that of an agent, liable only for the use of ordinary care in the safeguarding and remittance of such taxes; the dealer is liable as a taxpayer since under the statute, the tax is levied upon the dealer and not against the customer. Williams v. Bear's Den, Inc., 214 Ga. 240, 104 S.E.2d 230 (1958).

Retailer is required to pay the tax upon all nonexempt retail sales. — Retail sales are used solely as a measure of the retailer's liability. Oxford v. J.D. Jewell, Inc., 215 Ga. 616, 112 S.E.2d 601 (1960).

Retailer not relieved of tax liability by failure or inability to collect. — While the retailer is required as far as practicable to collect the tax from the consumer, the retailer's failure or inability to collect does not relieve the retailer from paying the tax. Oxford v. J.D. Jewell, Inc., 215 Ga. 616, 112 S.E.2d 601 (1960).

Tax is all-inclusive; exemptions are rare exception. — Ga. L. 1951, p. 360 is noted for the fact that the law is all-inclusive, covering everything from the cradle to the grave. Exemptions are the rare exception. Oxford v. J.D. Jewell, Inc., 215 Ga. 616, 112 S.E.2d 601 (1960).

Uniformity in taxation does not mean universality. Blackmon v. Cobb County-Marietta Water Auth., 126 Ga. App. 459, 191 S.E.2d 128 (1972).

Property in the hands of a trustee in bankruptcy is not thereby exempt from state and local taxes, absent a clear expression from Congress to the contrary. Blackmon v. Nichols, 494 F.2d 1179 (5th Cir. 1974).

Cited in Wheeler v. Strickland, 248 Ga. 85, 281 S.E.2d 556 (1981).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

IN GENERAL

TAXATION OF PARTICULAR PERSONS AND ENTITIES TAXATION OF PARTICULAR SALES AND USES

In General

Tax applies to all consensual or contractual agreements for consideration. — Ga. L. 1951, p. 360 is designed to reach consensual or contractual agreements, however effected, for the transfer of property for a consideration. 1971 Op. Att'y Gen. No. 71-145.

There is no sales or use tax on a gift of tangible personal property. However, if there is consideration, whether in the form of money or not, for the transfer of title or possession of tangible personal

property, the transaction is taxable. 1963-65 Op. Att'y Gen. p. 62.

When one commodity is traded in on another commodity, the sales are separate and distinct and thus a tax upon both, unless one is for resale. 1950-51 Op. Att'y Gen. p. 418.

When old equipment is traded in on new equipment of like kind, the sales tax applies on the difference. 1950-51 Op. Att'y Gen. p. 418.

What uses taxable. — Ga. L. 1951, p. 360 is not a tax on the use and consump-

In General (Cont'd)

tion of tangible personal property in this state, but is a tax on the transaction which constitutes a retail sale, with a supplementary tax on the first use within this state of tangible personal property purchased elsewhere in a transaction which would have been taxable if the transaction had occurred in this state. 1958-59 Op. Att'y Gen. p. 381.

Ga. L. 1951, p. 360 does not tax any bona fide interstate commerce. 1950-51 Op. Att'y Gen. p. 400; 1960-61 Op. Att'y Gen. p. 542.

In interstate commerce, "delivery" means transfer of possession. — Relating to the applicability of Ga. L. 1951, p. 360 to sales in interstate commerce, the use of the term "delivery" is generally used in the sense of a transfer of possession. 1963-65 Op. Att'y Gen. p. 67.

Transfer of possession or title in this state is taxable. — Regardless of where or when the parties intend title to pass, a taxable event takes place when possession or title is transferred in this state. Of course, if both title and possession are transferred outside the state, no taxable event occurs in Georgia to which the tax would apply. 1963-65 Op. Att'y Gen. p. 67.

Obligations imposed on sellers and purchasers. — Reading of Ga. L. 1951, p. 360 as a whole shows that the law contemplates the imposition of two separate and distinct obligations: (1) an obligation to collect the tax imposed upon sellers regularly engaged in selling tangible personal property as an occupational and privilege tax; and (2) an obligation upon the purchaser, user, or consumer to pay the tax. 1954-56 Op. Att'y Gen. p. 855.

Casual and isolated sales exempt. — One who makes a casual and isolated sale and who is not engaged in the business of selling tangible personal property is not responsible to collect the sales tax thereon. 1954-56 Op. Att'y Gen. p. 837.

Once taxpayer is adjudicated a bankrupt, penalties otherwise due under sales and use tax are not collectible by state. — 1962 Op. Att'y Gen. p. 542.

For discussion of exemptions to Ga.

L. 1951, p. 360. See 1952-53 Op. Att'y Gen. p. 232.

Taxation of Particular Persons and Entities

Exemption of purchases necessary to operation and maintenance of Jekyll Island's facilities. — Since the purchase of tangible personal property is an activity necessary to the operation and maintenance of the authority's buildings, sales of such property to the authority are exempt to the extent that the sales are made for the purposes of carrying on the operation and maintenance of its buildings. 1963-65 Op. Att'y Gen. p. 287.

Georgia Ports Authority is not exempt from paying sales tax on the purchase of supplies and equipment. 1950-51 Op. Att'y Gen. p. 409.

Georgia Ports Authority must collect and remit taxes when due. — If the Georgia Ports Authority sells tangible personal property or services, then the authority must register, collect, and remit to the commissioner taxes due under Ga. L. 1951, p. 360. 1950-51 Op. Att'y Gen. p. 409.

American National Red Cross is not liable for the payment of sales tax. 1950-51 Op. Att'y Gen. p. 419.

Federal Savings and Loan Associations created under Title 12 of the United States Code are not exempt. 1950-51 Op. Att'y Gen. p. 399.

National Farm Loan Associations created under Title 12 of the United States Code are exempt. 1950-51 Op. Att'y Gen. p. 398.

Exemption of credit unions. — Ga. L. 1974, p. 705, § 1, being later in time than Ga. L. 1951, p. 360, will exempt purchases of credit unions from the taxes imposed by the law. 1974 Op. Att'y Gen. No. 74-136.

Nonprofit organizations are not, because of their status as such, exempt from sales and use taxes. — When the organization is not registered with the commissioner as a dealer, one who sells to the organization must collect the tax. 1971 Op. Att'y Gen. No. U71-143.

Ga. L. 1951, p. 360 does not exempt sales by nonprofit corporations. 1972 Op. Att'y Gen. No. U72-109.

Ga. L. 1951, p. 360 contains no exemption as to purchases by churches. 1971 Op. Att'y Gen. No. U71-67.

Imposition of sales and use tax on military personnel. — Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. § 501 et seq., does not prohibit a general sales and use tax charged against military personnel. 1969 Op. Att'y Gen. No. 69-284.

Tax liability not determined by residence or domicile in state. — Fact that a service personnel is in this state because of military duty and maintains no residence here is immaterial in the determination of liability. The tax is not determined by residence or domicile in this state, but applies to residents and nonresidents alike, and to civilians and service personnel alike. 1958-59 Op. Att'y Gen. p. 385.

Taxation of Particular Sales and Uses

Warehousing is a service not taxable under Ga. L. 1951, p. 360. 1950-51 Op. Att'y Gen. p. 409.

Contractors on state construction jobs are required to pay sales tax on all materials used. 1950-51 Op. Att'y Gen. p. 409.

Consumer of fuel oil and kerosene used for curing tobacco must pay sales tax. 1950-51 Op. Att'y Gen. p. 411.

Sale of materials used in church construction is subject to the tax imposed by Ga. L. 1951, p. 360. 1972 Op. Att'y Gen. No. U72-96.

Charges for a meal served by a church is subject to sales tax. 1950-51 Op. Att'y Gen. p. 420.

State sales tax should be computed upon the sale of liquor or beer before the application of state and city excise taxes. 1952-53 Op. Att'y Gen. p. 231.

Imposition of tax on that portion of the purchase price of gasoline which is for federal gas tax and state motor fuel tax is not a tax on a tax. 1969 Op. Att'y Gen. No. 69-234.

Sales tax must be collected on the service of mixing concrete, since it is one of fabrication. 1950-51 Op. Att'y Gen. p. 418.

Sales tax applies to sheriff's sales and other forced sales, including condemnation. 1950-51 Op. Att'y Gen. p. 422.

Sheriffs who purchase food for prisoners out of their own funds are required to pay sales tax. 1950-51 Op. Att'y Gen. p. 422.

Sales tax applies to the acquisition of equipment and furniture to be used in hotel rooms. 1950-51 Op. Att'y Gen. p. 421.

Hotels, restaurants, and motor courts must pay tax on linens. — Hotels, restaurants, and motor courts sell services and are themselves consumers of linens. Such linens are not purchased by them for resale, and they should pay the sales tax thereon. 1950-51 Op. Att'y Gen. p. 421.

Hotel operators in this state should pay sales tax on linens rented to them by out-of-state linen service companies. 1950-51 Op. Att'y Gen. p. 421.

Sale of soft drinks through vending machines is taxable. 1950-51 Op. Att'y Gen. p. 421.

Taxicabs. — Rental charge made by a concern renting automobiles to individuals to be operated as taxicabs is taxable. 1950-51 Op. Att'y Gen. p. 423.

Taxicab fares and sales of tangible personal property on military reservations are subject to sales tax. 1954-56 Op. Att'y Gen. p. 857.

Operators of rental car services must pay sales tax on gasoline, tires, and other items used in their operation. 1950-51 Op. Att'y Gen. p. 423.

No sales tax on compensation paid to gasoline dealers for loss of stock in storage. 1950-51 Op. Att'y Gen. p. 405.

Common carrier does not have to pay a sales tax based on the compensation paid for loss or damage of property in the carrier's possession. 1950-51 Op. Att'y Gen. p. 405.

Retail sale of antique motor vehicles is taxable. 1969 Op. Att'y Gen. No. 69-386.

Foreclosure sales conducted by the Small Business Administration through an auctioneer are subject to Georgia sales tax. 1976 Op. Att'y Gen. No. 76-39.

Vending machine companies operating on federal areas are liable for collec-

Taxation of Particular Sales and Uses (Cont'd)

tion of the state sales tax. 1952-53 Op. Att'y Gen. p. 243.

Ga. L. 1951, p. 360 is applicable to sale of admission tickets to ball games sponsored by Georgia schools. 1960-61 Op. Att'y Gen. p. 544.

Electrical energy and fuel oil used for producing high temperatures in the operation of brick kilns and molding machinery are taxable. 1950-51 Op. Att'y Gen. p. 416.

Charge by a city for the installation of a water meter is not taxable, if the city retains title to the meter. 1950-51 Op. Att'y Gen. p. 407.

Sale of surplus property by a city is taxable, unless to a branch of government or for resale. 1950-51 Op. Att'y Gen. p. 407.

Taxation of Medicaid transactions. — Although the statutory foundation for the state Medicaid program refers to a "cost" incurred for medical assistance to an individual for which payments are made "on his behalf," 42 U.S.C. §§ 1396, 1396d, the terms do not purport to establish a contractual relationship within the scope of Ga. L. 1951, p. 360 between the recipient and pharmacist, or the recipient and the state. Rather, the terms are meant to fix the conditions on which the state will act. Thus, there is no contrac-

tual transfer of property for a consideration within the meaning of the tax statute. 1971 Op. Att'y Gen. No. 71-145.

Under the Medicaid programs the relationship between the pharmacist and the state, and whatever state "obligation" to pay that may result therefrom, simply does not fit into the concepts underlying the sales tax. 1971 Op. Att'y Gen. No. 71-145.

Persons admitted to swimming pools, golf courses, and furnished rooms in a hotel are purchasers within the contemplation of Ga. L. 1951, p. 360. 1963-65 Op. Att'y Gen. p. 745.

When teachers collect voluntary contributions from pupils for the purchase of educational supplies, such purchases, although made by an agency of the state and the local political subdivisions in which it is located, are subject to sales tax. 1963-65 Op. Att'y Gen. p. 23.

Exemption of Council of State Governments. — Ga. L. 1937, p. 708, § 10 and the obvious relationship of the Council of State Governments to the Georgia Commission on Interstate Cooperation and its work, indicate the legislative intent that the council's work be viewed as governmental at the state level. Accordingly, its property is in the nature of public property, and its purchases of tangible personal property and services under Ga. L. 1951, p. 360 are the equivalent of purchases by the state. 1972 Op. Att'y Gen. No. 72-20.

RESEARCH REFERENCES

ALR. — Validity of so-called "sales tax," 89 ALR 1432; 110 ALR 1485; 117 ALR 486; 128 ALR 893.

Rights as between dealer or manufacturer and taxing authorities in respect of taxes and license fees illegally received or collected, 93 ALR 1485; 119 ALR 542.

Validity and construction of statute or ordinance providing for relief of poor persons from taxes, 123 ALR 597.

Constitutionality, construction, and application of general use tax or other compensating tax designed to complement state sales tax, 129 ALR 222; 153 ALR 609.

Constitutionality of retroactive statute

imposing excise, license, or privilege tax, 146 ALR 1011.

Deductibility of other taxes or fees in computing excise or license taxes, 148 ALR 263; 174 ALR 1263.

Municipality as subject to state license or excise taxes, 159 ALR 365.

Sale of building materials, supplies, or fixtures to contractor, or his use thereof in construction or repairs, as sale at retail within tax statute or ordinance, 163 ALR 276; 171 ALR 697.

Sales tax on parts, repairs, or constituents used in repair of article, 11 ALR2d 926.

Use tax on property purchased by non-

resident in another state, 41 ALR2d 535.

Federal retail luxury or other excise tax as includable in amount on which state sales or use tax is computed, 43 ALR2d 862.

Redemption of trading stamps or the like for merchandise as sale at retail within taxing statute, 80 ALR2d 1221.

Retailer's or buyer's defenses against exaction of penalties for failure to file, or deficiency in, state or local sales tax return, 20 ALR4th 952.

State or local sales, use, or privilege tax on sales of, or revenues from sales of, advertising space or services, 40 ALR4th 1114.

PART 1

GENERAL PROVISIONS

48-8-1. Intent of article with respect to taxation of tangible personal property and services; constitutional and other exemptions.

It is the intention of the General Assembly in enacting this article to exercise its full and complete power to tax the retail purchase, retail sale, rental, storage, use, and consumption of tangible personal property and the services described in this article except to the extent prohibited by the Constitutions of the United States and of this state and except to the extent of specific exemptions provided in this article. (Ga. L. 1951, p. 360, § 4; Ga. L. 1965, p. 13, § 2; Code 1933, § 91A-4506, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 93.)

Law reviews. — For article, "Clarification Needed in Georgia Retail Sales and

Use Tax Statute," see 41 Mercer L. Rev. 1 (1989).

JUDICIAL DECISIONS

Tax on receipts derived from use of leased vehicle in interstate commerce. — Imposition of sales tax on that part of lease receipts derived from use of a leased vehicle in interstate commerce does not constitute a burden on interstate commerce and is therefore not within the

exemption created by this section, which provides that it is not the intention of Ga. L. 1951, p. 360 to levy a tax on bona fide interstate commerce. *Oxford v. Blankenship*, 106 Ga. App. 546, 127 S.E.2d 706 (1962) (see O.C.G.A. § 48-8-1).

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Taxation of trucks leased in state. — Any person or company engaged in the business of leasing trucks in this state has an obligation under Ga. L. 1951, p. 360 to pay tax on the gross proceeds to the commissioner and to pass the tax on to the lessee as an additional charge. The fact that the lessee may use a leased truck partially or exclusively in interstate hauls is immaterial so long as the first use

under the rental contract is within this state. 1957 Op. Att'y Gen. p. 321.

Exemption of property used, consumed exclusively outside state. — Construing Ga. L. 1951, p. 360, purchases made in this state of tangible personal property to be used or consumed or stored exclusively outside this state are not subject to the tax imposed by Ga. L. 1951, p. 360, and dealers are not required to collect

the tax from such purchasers. 1954-56 Op. Att'y Gen. p. 865.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, §§ 77, 167. accessories as subject to sales or use tax, 14 ALR4th 1370.

ALR. — Eyeglasses or other optical

48-8-2. Definitions.

As used in this article, the term:

(1) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

(2) "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including but not limited to detailed telecommunications billing service, directory assistance, vertical service, and voice mail services.

(3)(A) "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable and the products are sold for one nonitemized price. A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(B) As used in this paragraph, the term "distinct and identifiable products" shall not include:

(i) Packaging such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides, that accompanies the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoe boxes, dry cleaning garment bags, and express delivery envelopes and boxes;

(ii) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or

(iii) Items included in the sales price.

(C) As used in this paragraph, the term "one nonitemized price" shall not include a price that is separately identified by product on binding sales or other supporting sales related documentation

made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(D) A transaction that otherwise meets the definition of a bundled transaction as provided under this paragraph shall not be a bundled transaction if such transaction is:

(i) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, is provided exclusively in connection with the service, and the true object of the transaction is the service;

(ii) The retail sale of services where one service is provided that is essential to the use or receipt of a second service, the first service is provided exclusively in connection with the second service, and the true object of the transaction is the second service;

(iii)(I) A transaction that includes taxable products and non-taxable products and the purchase price or sales price of the taxable products is *de minimis*. As used in this subparagraph, the term “*de minimis*” means the seller’s purchase price or sales price of the taxable product is 10 percent or less of the total purchase price or sales price of the bundled products.

(II) Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are *de minimis*. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are *de minimis*.

(III) Sellers shall use the full term of a service contract to determine if the taxable products are *de minimis*; or

(iv) The retail sale of exempt tangible personal property and taxable tangible personal property where:

(I) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, or prosthetic devices; and

(II) The seller’s purchase price or sales price of the taxable tangible personal property is 50 percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the 50 percent determination for a transaction.

(4) "Business" means any activity engaged in by any person or caused to be engaged in by any person with the object of direct or indirect gain, benefit, or advantage.

(5) "Coin operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate.

(6) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(7) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference bridging service" shall not include the telecommunications services used to reach the conference bridge.

(8) "Dealer" means every person who:

(A) Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state tangible personal property and who cannot prove that the tax levied by this article has been paid on the sale at retail or on the use, consumption, distribution, or storage of the tangible personal property;

(B) Imports or causes to be imported tangible personal property from any state or foreign country for sale at retail, or for use, consumption, distribution, or storage for use or consumption in this state;

(C) Is the lessee or renter of tangible personal property and who pays to the owner of the property a consideration for the use or possession of the property in this state without acquiring title to the property;

(D) Leases or rents tangible personal property for a consideration, permitting the use or possession of the property in this state without transferring title to the property;

(E) Maintains or utilizes within this state an office, distribution center, salesroom or sales office, warehouse, service enterprise, or any other place of business, whether owned by such person or any other person, other than a common carrier acting in its capacity as such;

(F) Manufactures or produces tangible personal property for sale at retail or for use, consumption, distribution, or storage for use or consumption in this state;

(G) Sells at retail, offers for sale at retail, or has in his possession for sale at retail, or for use, consumption, distribution, or

storage for use or consumption in this state tangible personal property;

(H) Solicits business by an agent, employee, representative, or any other person;

(I) Engages in the regular or systematic solicitation of a consumer market in this state, unless the dealer's only activity in this state is:

(i) Advertising or solicitation by:

(I) Direct mail, catalogs, periodicals, or advertising fliers;

(II) Means of print, radio, or television media; or

(III) Telephone, computer, the Internet, cable, microwave, or other communication system;

(ii) The delivery of tangible personal property within this state solely by common carrier or United States mail; or

(iii) To engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, so long as such activities are the dealer's sole physical presence in this state and the dealer, including any of its representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than five days, in whole or in part, in this state during any 12 month period and did not derive more than \$100,000.00 of net income from those activities in this state during the prior calendar year. A retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a retailer engaged in business in this state and liable for collection of the applicable sales or use tax with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

The exceptions provided in divisions (i), (ii), and (iii) of this subparagraph shall not apply to any requirements under Code Section 48-8-14;

(J) Is an affiliate that sells at retail, offers for sale at retail in this state, or engages in the regular or systematic solicitation of a consumer market in this state through a related dealer located in this state unless:

(i) The in-state dealer to which the affiliate is related does not engage in any of the following activities on behalf of the affiliate:

- (I) Advertising;
- (II) Marketing;
- (III) Sales; or
- (IV) Other services; and

(ii) The in-state dealer to which the affiliate is related accepts the return of tangible personal property sold by the affiliate and also accepts the return of tangible personal property sold by any person or dealer that is not an affiliate on the same terms and conditions as an affiliate's return;

As used in this subparagraph, the term "affiliate" means any person that is related directly or indirectly through one or more intermediaries, controls, is controlled by, is under common control with, or is subject to the control of a dealer described in subparagraphs (A) through (I) of this paragraph or in this subparagraph;

(K)(i) Makes sales of tangible personal property or services that are taxable under this chapter if a related member, as defined in Code Section 48-7-28.3, other than a common carrier acting in its capacity as such, that has substantial nexus in this state:

- (I) Sells a similar line of products as the person and does so under the same or a similar business name; or
- (II) Uses trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the person.

(ii) The presumption that a person described in this subparagraph qualifies as a dealer in this state may be rebutted by showing that the person does not have a physical presence in this state and that any in-state activities conducted on its behalf are not significantly associated with the person's ability to establish and maintain a market in this state;

(L)(i) Makes sales of tangible personal property or services that are taxable under this chapter if any other person, other than a common carrier acting in its capacity as such, who has a substantial nexus in this state:

- (I) Delivers, installs, assembles, or performs maintenance services for the person's customers within this state;
- (II) Facilitates the person's delivery of property to customers in this state by allowing the person's customers to pick up property sold by the person at an office, distribution facility, warehouse, storage place, or similar place of business maintained by the person in this state; or

(III) Conducts any other activities in this state that are significantly associated with the person's ability to establish and maintain a market in this state for the person's sales.

(ii) The presumption that a person described in this subparagraph qualifies as a dealer in this state may be rebutted by showing that the person does not have a physical presence in this state and that any in-state activities conducted on its behalf are not significantly associated with the person's ability to establish and maintain a market in this state;

(M)(i) Enters into an agreement with one or more other persons who are residents of this state under which the resident, for a commission or other consideration, based on completed sales, directly or indirectly refers potential customers, whether by a link on an Internet website, an in-person oral presentation, telemarketing, or otherwise, to the person, if the cumulative gross receipts from sales by the person to customers in this state who are referred to the person by all residents with this type of an agreement with the person is in excess of \$50,000.00 during the preceding 12 months.

(ii) The presumption that a person described in this subparagraph is a dealer in this state may be rebutted by submitting proof that the residents with whom the person has an agreement did not engage in any activity within this state that was significantly associated with the person's ability to establish or maintain the person's market in the state during the preceding 12 months. Such proof may consist of sworn written statements from all of the residents with whom the person has an agreement stating that they did not engage in any solicitation in this state on behalf of the person during the preceding year, provided that such statements were provided and obtained in good faith. This subparagraph shall take effect December 31, 2012, and shall apply to sales made, uses occurring, and services rendered on or after December 31, 2012, without regard to the date the person and the resident entered into the agreement described in this subparagraph;

(N) Notwithstanding any of the provisions contained in this paragraph, with respect to a person that is not a resident or domiciliary of Georgia, that does not engage in any other business or activity in Georgia, and that has contracted with a commercial printer for printing to be conducted in Georgia, such person shall not be deemed a dealer in Georgia merely because such person:

(i) Owns tangible or intangible property which is located at the Georgia premises of a commercial printer for use by such printer in performing services for the owner;

(ii) Makes sales and distributions of printed material produced at and shipped or distributed from the Georgia premises of the commercial printer;

(iii) Performs activities of any kind at the Georgia premises of the commercial printer which are directly related to the services provided by the commercial printer; or

(iv) Has printing, including any printing related activities, and distribution related activities performed by the commercial printer in Georgia for or on its behalf,

nor shall such person, absent any contact with Georgia other than with or through the use of the commercial printer or the use of the United States Postal Service or a common carrier, have an obligation to collect sales or use tax from any of its customers located in Georgia based upon the activities described in divisions (i) through (iv) of this subparagraph. In no event described in this subparagraph shall such person be considered to have a fixed place of business in Georgia at either the commercial printer's premises or at any place where the commercial printer performs services on behalf of that person;

(O) Any ruling, agreement, or contract, whether written or oral and whether express or implied, between a person and this state's executive branch or any other state agency or department stating, agreeing, or ruling that such person is not a dealer required to collect sales and use tax in this state despite the presence of a warehouse, distribution center, or fulfillment center in this state that is owned or operated by the person or a related member shall be null and void unless it is specifically approved by a majority vote of each body of the General Assembly. For purposes of this subparagraph, the term "related member" has the same meaning as in Code Section 48-7-28.3;

(P) Each dealer shall collect the tax imposed by this article from the purchaser, lessee, or renter, as applicable, and no action seeking either legal or equitable relief on a sale, lease, rental, or other transaction may be had in this state by the dealer unless the dealer has fully complied with this article; or

(Q) The commissioner shall promulgate such rules and regulations necessary to administer this paragraph, including other such information, applications, forms, or statements as the commissioner may reasonably require.

(9) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(10) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location

designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

(11) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(11.1) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subparagraph;

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the "Supplements Facts" box found on the label as required pursuant to 21 C.F.R. Section 101.36.

(12) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the costs of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

(13) "Directory assistance" means an ancillary service of providing telephone number information or address information, or both.

(14) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body.

(15) “Durable medical equipment” means equipment including repair and replacement parts for the same, but does not include mobility enhancing equipment, which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

(16) “Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” shall not include alcoholic beverages, dietary supplements, or tobacco.

(17) “Lease or rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. “Lease or rental” includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. Section 7701(h)(1). “Lease or rental” shall not include:

(A) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(B) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of \$100.00 or 1 percent of the total required payments; or

(C) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an

operator must do more than maintain, inspect, or install the tangible personal property.

(18) "Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(19) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, by which the origination or termination points, or both, of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

(20) "Mobility enhancing equipment" means equipment including repair and replacement parts to the same, but does not include durable medical equipment, which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(20.1) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. Section 201.66. The "over-the-counter drug" label includes:

(A) A "Drug Facts" panel; or

(B) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance, or preparation.

(21) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

(22) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(23) "Prepaid local tax" means any local sales and use tax which is levied on the sale or use of motor fuel and imposed in an area

consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter. Such tax is based on the same average retail sales price as set forth in subparagraph (b)(2)(B) of Code Section 48-9-14. Such price shall be used to compute the prepaid sales tax rate for local jurisdictions by multiplying such retail price by the applicable rate imposed by the jurisdiction. The person collecting and reporting the prepaid local tax for the local jurisdiction shall provide a schedule as to which jurisdiction these collections relate. This determination shall be based upon the shipping papers of the conveyance that delivered the motor fuel to the dealer or consumer in the local jurisdiction. A seller may rely upon the representation made by the purchaser as to which jurisdiction the shipment is bound and prepare shipping papers in accordance with those instructions.

(24) "Prepaid state tax" means the tax levied under Code Section 48-8-30 in conjunction with Code Section 48-8-3.1 and Code Section 48-9-14 on the retail sale of motor fuels for highway use and collected prior to that retail sale. This tax is based upon the average retail sales price as set forth in Code Section 48-9-14.

(25) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(26) Reserved.

(27) "Prepared food" means:

(A) Food:

(i) Sold in a heated state or heated by the seller;

(ii) With two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; and

(B) "Prepared food" shall not include food:

(i) That is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as in Chapter 3, part 401.11 of the United States Food and Drug Administration Food Code so as to prevent food borne illnesses;

(ii) Sold by a seller whose proper primary North American Industrial Classification System code is subsector 311, food manufacturing, except for industry group 3118, bakeries and tortilla manufacturing, if sold without eating utensils provided by the seller; or

(iii) Sold by a seller whose proper primary North American Industrial Classification System code is industry group 3121, beverage manufacturing.

(28) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

(28.1) "Prewritten computer software" means "computer software," including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software." "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances "computer software" of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software"; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software."

(29) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction; or

(C) Support a weak or deformed portion of the body.

“Prosthetic device” shall not include hearing aids.

(30) “Purchase price” applies to the measure subject to use tax and has the same meaning as sales price.

(30.1) “Referral from a SOURCE Case Management Provider” means the authorization of, arrangement for, or coordination of long-term care services, including nursing home services by a SOURCE Case Management Provider. This paragraph shall stand automatically repealed on the date the state treasurer certifies in writing to the commissioner that federal matching funds have ceased to be available or on June 30, 2014, whichever date is earlier.

(31) “Retail sale” or a “sale at retail” means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent. Sales for resale must be made in strict compliance with the commissioner’s rules and regulations. Any dealer making a sale for resale which is not in strict compliance with the commissioner’s rules and regulations shall himself be liable for and shall pay the tax. The terms “retail sale” or “sale at retail” include but are not limited to the following:

(A) Except as otherwise provided in this chapter, the sale of natural or artificial gas, oil, electricity, solid fuel, transportation, local telephone services, alcoholic beverages, and tobacco products, when made to any purchaser for purposes other than resale;

(B) The sale or charges for any room, lodging, or accommodation furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. This tax shall not apply to rooms, lodgings, or accommodations supplied for a period of 90 continuous days or more;

(C) Sales of tickets, fees, or charges made for admission to, or voluntary contributions made to places of, amusement, sports, or entertainment including, but not limited to:

- (i) Billiard and pool rooms;
- (ii) Bowling alleys;
- (iii) Amusement devices;
- (iv) Musical devices;
- (v) Theaters;
- (vi) Opera houses;
- (vii) Moving picture shows;

(viii) Vaudeville;

(ix) Amusement parks;

(x) Athletic contests including, but not limited to, wrestling matches, prize fights, boxing and wrestling exhibitions, football games, and baseball games;

(xi) Skating rinks;

(xii) Race tracks;

(xiii) Public bathing places;

(xiv) Public dance halls; and

(xv) Any other place at which any exhibition, display, amusement, or entertainment is offered to the public or any other place where an admission fee is charged;

(D) Charges made for participation in games and amusement activities;

(E) Sales of tangible personal property to persons for resale when there is a likelihood that the state will lose tax funds due to the difficulty of policing the business operations because:

(i) Of the operation of the business;

(ii) Of the very nature of the business;

(iii) Of the turnover of so-called independent contractors;

(iv) Of the lack of a place of business in which to display a certificate of registration;

(v) Of the lack of a place of business in which to keep records;

(vi) Of the lack of adequate records;

(vii) The persons are minors or transients;

(viii) The persons are engaged in essentially service businesses; or

(ix) Of any other reasonable reason.

The commissioner may promulgate rules and regulations requiring vendors of persons described in this subparagraph to collect the tax imposed by this article on the retail price of the tangible personal property. The commissioner shall refuse to issue certificates of registration and may revoke certificates of registration issued in violation of his rules and regulations;

(F) Charges, which applied to sales of telephone service, made for local exchange telephone service, except coin operated tele-

phone service, except as otherwise provided in subparagraph (G) of this paragraph;

(G) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from the provider's books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes; or

(H)(i) Charges made for services by a person which are the subject of a referral from a SOURCE Case Management Provider.

(ii) This subparagraph shall stand automatically repealed on the date the state treasurer certifies in writing to the commissioner that federal matching funds have ceased to be available or on June 30, 2014, whichever date is earlier.

(32) "Retailer" means every person making sales at retail or for distribution, use, consumption, or storage for use or consumption in this state and has the same meaning as "seller" in Code Section 48-8-161.

(33)(A) "Sale" means any transfer of title or possession, transfer of title and possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means of any kind of tangible personal property for a consideration except as otherwise provided in subparagraph (B) of this paragraph and includes, but is not limited to:

(i) The fabrication of tangible personal property for consumers who directly or indirectly furnish the materials used in such fabrication;

(ii) The furnishing, repairing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, repairing, or serving the tangible personal property; or

(iii) A transaction by which the possession of property is transferred but the seller retains title as security for the payment of the price.

(B) Notwithstanding a dealer's physical presence, in the case of a motor vehicle retail sale, excluding lease or rental, the taxable situs of the transaction for the purposes of collecting local sales and use taxes shall be the county of motor vehicle registration of the purchaser.

(34)(A) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise without any deduction for the following:

- (i) The seller's cost of the property sold;
- (ii) The cost of materials used, labor, or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (iii) Charges by the seller for any services necessary to complete the sale; and
- (iv) Delivery charges.

(B) "Sales price" shall not include:

- (i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (iv) Installation charges if they are separately stated on the invoice, billing, or similar document given to the purchaser;
- (v) Telecommunications nonrecurring charges if they are separately stated on the invoice, billing, or similar document; and
- (vi) Credit for any trade-in.

(C) "Sales price" shall include consideration received by the seller from third parties if:

- (i) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; provided, however, that a "preferred customer" card that is available to any patron shall not constitute membership in such a group; or

(III) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(34.1) "SOURCE Case Management Provider" means an entity that has successfully completed the Georgia Medicaid Enhanced Case Management Application and enrollment process, including any related required training, and has entered into a contract with the Department of Community Health, Division of Medical Assistance to provide enhanced case management services. This paragraph shall stand automatically repealed on the date the state treasurer certifies in writing to the commissioner that federal matching funds have ceased to be available or on June 30, 2014, whichever date is earlier.

(35) "Storage" means any keeping or retention in this state of tangible personal property for use or consumption in this state or for any purpose other than sale at retail in the regular course of business.

(36) "Streamlined sales tax agreement" means the Streamlined Sales and Use Tax Agreement under Code Section 48-8-162.

(37) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software. "Tangible personal property" does not mean stocks, bonds, notes, insurance, or other obligations or securities.

(38) “Telecommunications nonrecurring charges” means an amount billed for the installation, connection, change, or initiation of telecommunications service received by the customer.

(39) “Telecommunications service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. “Telecommunications service” shall not include:

(A) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser’s primary purpose for the underlying transaction is the processed data or information;

(B) Installation or maintenance of wiring or equipment on a customer’s premises;

(C) Tangible personal property;

(D) Advertising, including but not limited to directory advertising;

(E) Billing and collection services provided to third parties;

(F) Internet access service;

(G) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 U.S.C. Section 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. Section 20.3;

(H) Ancillary services; or

(I) Digital products delivered electronically, including but not limited to software, music, video, reading materials, or ring tones.

(39.1) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that includes tobacco.

(40) “Use” means the exercise of any right or power over tangible personal property incident to the ownership of the property includ-

ing, but not limited to, the sale at retail of the property in the regular course of business.

(41) “Use tax” includes the use, consumption, distribution, and storage of tangible personal property as defined in this article.

(42) “Vertical service” means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(43) “Voice mail service” means an ancillary service that enables the customer to store, send, or receive recorded messages. “Voice mail service” does not include any vertical services that the customer may be required to have in order to utilize the voice mail service. (Ga. L. 1951, p. 360, §§ 3, 4; Ga. L. 1960, p. 153, § 3; Ga. L. 1971, p. 85, § 1; Ga. L. 1978, p. 1664, § 1; Code 1933, § 91A-4501, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, §§ 81-84; Ga. L. 1980, p. 10, § 22; Ga. L. 1982, p. 3, § 48; Ga. L. 1990, p. 1243, § 1; Ga. L. 1992, p. 1521, § 1; Ga. L. 1994, p. 928, § 4A; Ga. L. 1995, p. 10, § 48; Ga. L. 1996, p. 220, § 7; Ga. L. 1998, p. 124, § 3; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 975, § 1; Ga. L. 2003, p. 355, § 3; Ga. L. 2003, p. 665, § 10; Ga. L. 2005, p. 788, § 1/HB 22; Ga. L. 2006, p. 59, § 1/HB 111; Ga. L. 2007, p. 309, § 1/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 1/HB 1221; Ga. L. 2011, p. 38, §§ 2, 3/HB 168; Ga. L. 2011, p. 674, §§ 1-2, 1-3/HB 117; Ga. L. 2012, p. 257, § 6-1/HB 386; Ga. L. 2012, p. 694, § 3/HB 729; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2011 amendments. — The first 2011 amendment, effective April 27, 2011, added paragraphs (11.1), (20.1), and (39.1); inserted “, dietary supplements,” near the end of paragraph (16); added the undersigned language at the end of the paragraph (29); substituted “sale; and” for “sale, other than delivery and installation charges,” in division (34)(A)(iii); substituted a period for a semicolon at the end of division (34)(A)(iv); deleted division (34)(A)(v), which read: “Installation charges; and”; and deleted division (34)(A)(vi), which read: “Credit for any trade-in, except as otherwise provided in division (vii) of subparagraph (B) of this paragraph.”; in subparagraph (34)(B), inserted a comma in division (34)(B)(ii); deleted division (34)(B)(v), which read: “Charges by the seller for any services necessary to complete the sale if they are separately stated on the invoice, billing, or similar document given to the pur-

chaser;”; redesignated former divisions (34)(B)(vi) and (34)(B)(vii) as present divisions (34)(B)(v) and (34)(B)(vi), respectively, and, in division (34)(B)(vi), deleted “motor vehicle” preceding “trade-in”; and substituted “third-party” for “third party” in subdivision (34)(C)(iv)(III). The second 2011 amendment, effective July 1, 2011, added paragraph (30.1); deleted “or” at the end of subparagraph (31)(F); substituted “; or” for a period at the end of subparagraph (31)(G); added subparagraph (31)(H); and added paragraph (34.1).

The 2012 amendments. — The first 2012 amendment, effective October 1, 2012, inserted “in this state” in subparagraphs (8)(C) and (8)(D); in subparagraph (8)(E), substituted “utilizes within this state an” for “has within this state, indirectly or by a subsidiary, an” near the beginning, and added “, whether owned by such person or any other person, other

than a common carrier acting in its capacity as such” at the end; deleted “or” at the end of subdivision (8)(I)(i)(III); added “; or” at the end of division (8)(I)(ii); added division (8)(I)(iii); substituted “divisions (i), (ii), and (iii)” for “divisions (i) and (ii)” in the undesignated language at the end of division (8)(I)(iii); added subparagraphs (8)(K) through (8)(M); redesignated former subparagraph (8)(K) as present subparagraph (8)(N); added subparagraph (8)(O); and redesignated former subparagraphs (8)(L) and (8)(M) as present subparagraphs (8)(P) and (8)(Q), respectively. The second 2012 amendment, effective May 1, 2012, added the third sentence of the introductory language of paragraph (17); substituted “\$100.00 or 1 percent” for “one hundred dollars or one percent” in subparagraph (17)(B); substituted “units or dollars” for “units of dollars” in paragraph (25); and, in subparagraph (33)(B), substituted “sale, excluding lease or rental,” for “sale or a motor vehicle lease or rental when the lease or rental period exceeds 30 days and when the purchaser or lessee is a resident of this state,” and deleted “or lessee” at the end.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation throughout this Code section; revised language in paragraph (1); designated paragraph (3) as present subparagraph (3)(A) and redesignated former subparagraphs (3)(A) through (3)(C) as present subparagraphs (3)(B) through (3)(D), respectively; substituted “As used in this paragraph, the term ‘distinct and identifiable products’” for “‘Distinct and identifiable products’” in subparagraph (3)(B); added “As used in this paragraph,” at the beginning of subparagraph (3)(C); substituted “as provided under this paragraph shall not be a bundled transaction if such transaction” for “as defined above, is not a ‘bundled transaction’ if it” in paragraph (3)(D); deleted “and” preceding “is provided” in division (3)(D)(i); deleted “and” preceding “the first” in division (3)(D)(ii); redesignated former paragraph (26) as present paragraph (28.1) and reserved paragraph (26); and inserted “Section” twice in subparagraph (39)(G).

Code Commission notes. — The amendment of this Code section by Ga. L.

2003, p. 355, § 3, irreconcilably conflicted with and was treated as superseded by Ga. L. 2003, p. 665, § 10. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2011, “This paragraph” was substituted for “This subparagraph” in the last sentence in paragraphs (30.1) and (34.1).

Pursuant to Code Section 28-9-5, in 2012, “This subparagraph shall take effect December 31, 2012, and shall apply to sales made, uses occurring, and services rendered on or after December 31, 2012, without regard to the date” was substituted for “This subparagraph shall take effect 90 days after the effective date of this Act and shall apply to sales made, uses occurring, and services rendered on or after the effective date of this subparagraph without regard to the date” in subparagraph (8)(M)(ii).

Editor’s notes. — Ga. L. 1992, p. 1521, § 4, not codified by the General Assembly, provides: “This Act [which amended this Code section] shall stand repealed in its entirety on January 1, 1996, and shall be void and of no effect and the provisions affected by this Act shall be specifically revived as such provisions stood before the enactment of this Act, as amended by laws other than this Act.”

Ga. L. 1994, p. 834, § 4, not codified by the General Assembly, repeals Ga. L. 1992, p. 1521, § 4, which had provided for the repeal of this Code section as affected by that 1992 Act effective January 1, 1996.

Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Business Expansion Support Act of 1994.’”

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2003.’”

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: “Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effec-

tive date of the relevant portion of this Act.” This Act became effective October 1, 2012.

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: “This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act.” This act became effective October 1, 2012.

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Cross references. — Limitations on contracting with state agencies by dealers refusing to pay sales tax, § 50-5-82.

Law reviews. — For article, “Clarification Needed in Georgia Retail Sales and

Use Tax Statute,” see 41 Mercer L. Rev. 1 (1989). For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U.L. Rev. 217 (2011). For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 112 (2012).

For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 249 (1994). For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

For comment on *Colonial Stores v. Undercofler*, 223 Ga. 105, 153 S.E.2d 549 (1967), see 4 Ga. St. B.J. 132 (1967).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
BUSINESS
COST PRICE
DEALER
LEASE OR RENTAL
RETAIL SALE
SALE
SALES PRICE
TANGIBLE PERSONAL PROPERTY
USE TAX

General Consideration

Cited in *International Computer Group, Inc. v. Data Gen. Corp.*, 159 Ga. App. 169, 283 S.E.2d 12 (1981); *Strickland v. W.E. Ross & Sons*, 251 Ga. 324, 304 S.E.2d 719 (1983).

Business

Intent is to tax sales carried on as a business or occupation. — From Ga. L. 1951, p. 360, taken as a whole, the intention is clear that it is the gross proceeds from retail sales carried on as a business or occupation which is designed to be taxed. *Novak v. Redwine*, 89 Ga. App. 755, 81 S.E.2d 222 (1954).

No definitive distinction can be drawn between the definition of “business” and the term’s common

and accepted meaning. *Novak v. Redwine*, 89 Ga. App. 755, 81 S.E.2d 222 (1954).

Definition of “business” is closely identifiable with the definition of that word given by Black’s Law Dictionary, which defines business as “that which occupies the time, attention, and labor of men for the purpose of a livelihood or profit,” and which is the commonly accepted meaning of the term. *Novak v. Redwine*, 89 Ga. App. 755, 81 S.E.2d 222 (1954).

Words “engaged in business” imply an element of continuity or habitual practice. *Novak v. Redwine*, 89 Ga. App. 755, 81 S.E.2d 222 (1954).

Definition of “business” does not say “any act engaged in for gain,” but rather, “any activity.” *Novak v.*

Redwine, 89 Ga. App. 755, 81 S.E.2d 222 (1954).

Whether activity amounts to business is to be construed in taxpayer's favor. — Since revenue statutes are to be construed strictly so as to resolve doubt in favor of the taxpayer, and since their meaning is not to be extended by implication, and under this rule, any doubt as to whether the definition of "business" as "any activity engaged in" was meant to narrow the word down to include a single transaction, instead of the word's ordinary meaning of continuity of transactions, should be resolved in favor of the taxpayer. *Novak v. Redwine*, 89 Ga. App. 755, 81 S.E.2d 222 (1954).

Exemption of casual and isolated sales. — Casual and isolated sale made by one not engaged in the business of selling tangible personal property at retail is not taxable. *Novak v. Redwine*, 89 Ga. App. 755, 81 S.E.2d 222 (1954); *State v. Dyson*, 89 Ga. App. 791, 81 S.E.2d 217 (1954).

Term "casual sales" is from case law and revenue regulations. — Ga. L. 1951, p. 360 does not define or even mention "casual sales." The term comes from case law and revenue regulations. *Newscopters, Inc. v. Blackmon*, 125 Ga. App. 130, 186 S.E.2d 759 (1971).

Disposal of business fixtures after ceasing to be engaged in that business. — Sale of business fixtures and equipment, after an owner has ceased to do business, is not a transaction by one engaged in the business of buying and selling such business fixtures and equipment, and is not taxable. *Novak v. Redwine*, 89 Ga. App. 755, 81 S.E.2d 222 (1954).

Cost Price

"Cost price" may be taken as synonymous with the term "sales price," insofar as "sales price" relates to the sale of tangible personal property rather than to the sale of services. *Colonial Pipeline Co. v. Undercofler*, 115 Ga. App. 58, 153 S.E.2d 592 (1967).

Services incident to sale of tangible personal property. — When the vendor furnishes services incidental to the sale of tangible personal property, such as deliv-

ery to the purchaser, and no additional charge is made for the services so as to constitute a separate sale of services, the services are included in the sale price or cost price of the property for the purpose of computing the applicable sales or use tax. *Colonial Pipeline Co. v. Undercofler*, 115 Ga. App. 58, 153 S.E.2d 592 (1967).

Dealer

Person who is president and treasurer of a corporation which sells at retail is a dealer. *Bunge v. State*, 149 Ga. App. 712, 256 S.E.2d 23 (1979).

Contractor not a dealer as to building materials used by contractor in construction. — Contractor who buys building material is not one who buys and sells — a trader. The contractor is not a dealer, or one who habitually and constantly, as in business, deals in and sells any given commodity. The contractor is a user and consumer of such materials and is liable for sales and use tax, even though title to materials finally vests in the customer. *J.W. Meadors & Co. v. State*, 89 Ga. App. 583, 80 S.E.2d 86 (1954).

Lease or Rental

"Rental" is the equivalent of "re-sale." *Undercofler v. Macon Linen Serv., Inc.*, 114 Ga. App. 231, 150 S.E.2d 703 (1966).

What included in charges for rooms, lodgings, and accommodations. — Sale or charges for any room or rooms, lodgings, or accommodations furnished to transients encompasses whatever is rented, whether one room or several, whether bare or elaborately appointed. *Atlanta Americana Motor Hotel Corp. v. Undercofler*, 222 Ga. 295, 149 S.E.2d 691 (1966).

Lease of advertising signs is taxable. *Register Mobile Adv., Inc. v. Strickland*, 242 Ga. 604, 250 S.E.2d 468 (1978).

Leases of tangible personal property are to be treated the same as sales under sales and use tax laws. *Strickland v. Sperry Rand Corp.*, 248 Ga. 535, 285 S.E.2d 1 (1981).

Retail Sale

All retail sales except those specifically exempted are taxable under Ga.

Retail Sale (Cont'd)

L. 1951, p. 360. *Undercofler v. VFW Post 4625*, 110 Ga. App. 711, 139 S.E.2d 776 (1964).

Test is whether sale is last sale. — Definition of a retail sale as a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property does not confine retail sales to sales made to consumers only. The chief element of the definition is that such a sale shall not be followed by a resale, or another retail sale, but shall be the last of a possible series of sales. *Craig-Tourial Leather Co. v. Reynolds*, 87 Ga. App. 360, 73 S.E.2d 749 (1952).

Not all items reflected in price charged are deemed held for resale or rental. — Although all costs of a company's operations are reflected in the rental or contract price charged the company's customers, including the costs of the equipment used by the company for storage, this circumstance does not in itself operate to show a resale or rental of these items so as to render the items' sale to the company other than a taxable transaction. *Undercofler v. Macon Linen Serv., Inc.*, 114 Ga. App. 231, 150 S.E.2d 703 (1966).

When sale deemed completed in this state. — Sale is completed in this state when the customer acquires the right to the property even though the delivery of the property is delayed and even though actual delivery does not take place in the state. *Meade Corp. v. Blackmon*, 129 Ga. App. 526, 199 S.E.2d 839 (1973).

Sports or entertainment events held or sponsored by charitable organizations. — Horse show is an event of sports or of entertainment, and that it was held by or sponsored by a charitable organization with tax-exempt status does not relieve it from the payment of the tax. *Atlanta Hunter-Jumper Classic, Inc. v. Blackmon*, 125 Ga. App. 38, 186 S.E.2d 434 (1971).

Admission price taxable even if otherwise partially tax deductible. — There is no authority in Ga. L. 1951, p. 360 to exempt portions of amounts required to be paid to reserve admissions to

a sporting event simply because a portion of the amount is designated by the sponsor in the sponsor's advertisements as "tax deductible." *Atlanta Hunter-Jumper Classic, Inc. v. Blackmon*, 125 Ga. App. 38, 186 S.E.2d 434 (1971).

Sale of steel dies to a manufacturer is not a personal service transaction when such dies are used by the manufacturer until disposed of. *Mead Corp. v. Strickland*, 247 Ga. 495, 276 S.E.2d 586 (1981).

Sale or purchase of chances or plays in a lottery. — Term "retail sale" applies to the sale and purchase of chances or plays in a lottery known as the numbers game, which tickets or chances are taxable under Ga. L. 1951, p. 360. *Chilivis v. Fleming*, 139 Ga. App. 295, 228 S.E.2d 178 (1976).

Operation of slot machines and one-armed bandits is taxable. — Operation of coin operated gaming devices known as slot machines or one-armed bandits by depositing a coin therein is a transaction amounting to a taxable sale. *Undercofler v. VFW Post 4625*, 110 Ga. App. 711, 139 S.E.2d 776 (1964).

Slot machines are not excluded from this section merely because it amounts to an illegal transaction. *Undercofler v. American Legion Post 69*, 112 Ga. App. 27, 143 S.E.2d 684 (1965).

Treatment of wholesale transactions as retail sales. — Ga. L. 1951, p. 360 authorizes the commissioner to treat some wholesale transactions as retail sales and to make regulations requiring certain sellers to collect sales tax on wholesale transactions. *Independent Publishing Co. v. Hawes*, 119 Ga. App. 858, 168 S.E.2d 904 (1969).

Purchase of merchandise to be given in exchange for trading stamps.

— Transactions between merchant and customers with reference to trading stamps and premium merchandise are sales since stamps issued to customers in consideration of purchases represent right to premium merchandise. The purchase of premium merchandise by the merchant is a purchase for purposes of resale, and is therefore not taxable. *Colonial Stores v. Undercofler*, 223 Ga. 105, 153 S.E.2d 549 (1967), commented on in 4 Ga. St. B.J. 132 (1967).

Transfer of advertising materials to distributors together with product. —

Brewing company must pay use tax on advertising materials that accompany malt liquor transferred to distributors because the absence of a separate charge for the advertising indicates that the advertising does not fall within the resale exemption and because the advertising materials will in fact never be sold at any time during the distribution chain. *Carling Brewing Co. v. Blackmon*, 131 Ga. App. 211, 205 S.E.2d 492 (1974).

Taxation of airline meals. — Ga. L. 1951, p. 360 imposes a tax on the sale of airline meals included in the in-state sale of a ticket to a passenger, but not on the purchase of the meals from a supplier by the airline since such purchases are held for resale to passengers. *Undercofler v. Eastern Air Lines*, 221 Ga. 824, 147 S.E.2d 436 (1966).

Sale

Tax is on total consideration, regardless of number of sources. — It is the consideration for the transfer of personal property which is taxed. The consideration may come from more than one source, but the total consideration is the total of all amounts. The total amount, or gross sales price, is taxable. *Davis v. Chilivis*, 142 Ga. App. 679, 237 S.E.2d 2 (1977).

"First use" means first use in this state. — When Ga. L. 1951, p. 360, § 8 is read in pari materia with Ga. L. 1951, p. 360, § 3 it is apparent that the first use referred to in Ga. L. 1951, p. 360, § 8 means the first use in this state. *Ingalls Iron Works Co. v. Chilivis*, 237 Ga. 479, 228 S.E.2d 866 (1976), appeal dismissed, 429 U.S. 1081, 97 S. Ct. 1086, 51 L. Ed. 2d 528 (1977).

Construction of "holding for resale." — Phrase "holding for resale" must be construed to cover those situations when the seller is engaged in the business of selling or leasing property on a continual and habitual basis. *Chilivis v. Bradley*, 142 Ga. App. 793, 237 S.E.2d 200 (1977).

Judicial sale is not exempt from the tax imposed by Ga. L. 1951, p. 360. *Hopkins v. West Publishing Co.*, 106 Ga. App. 596, 127 S.E.2d 849 (1962).

For examples of what constitutes furnishing by consumer of materials used in fabrication see *Superior Type, Inc. v. Williams*, 98 Ga. App. 89, 105 S.E.2d 14 (1958).

Passage of title required. — When a company is denominated as the seller in the company's sales contracts, there must be a sale within the meaning of O.C.G.A. § 48-8-2(8) from the manufacturer to the company so that the company can pass the title to the purchaser, even though the company contends the company is only the sales representative for the manufacturer. *Adrian Hous. Corp. v. Collins*, 253 Ga. 263, 319 S.E.2d 852 (1984).

Sales Price

Gross sales price of a new product is subject to a sales tax. *Southwire Co. v. Chilivis*, 139 Ga. App. 329, 228 S.E.2d 295 (1976).

What constitutes remodeling or repairing property sold. — Charges by a taxpayer to its customers for modifications in equipment sold by the taxpayer to its customers, but retained and used by the taxpayer to manufacture products for the customers, such charges representing the costs to the taxpayer of tax-free services generally obtained from a third party, without any specific charge for the negligible use of materials, are charges for services rendered in remodeling or repairing property sold and are therefore properly excluded from the sales price for tax purposes. *Undercofler v. Thompson Indus., Inc.*, 114 Ga. App. 497, 151 S.E.2d 844 (1966).

Inclusion of other taxes in sales price for purposes of calculating sales tax. — If the imposition of other taxes, such as those on cigarettes, falls upon the consumer or the incident of the sale by the retailer to the consumer they are not included as part of the retail sale price for calculating the sales and use tax. If, however, the tax is imposed at a time prior to the point of retail sale or other consumer transaction, it is an element of the cost of the property sold and must be included as part of the retail sale price for purposes of calculating the sales and use tax. *Blackmon v. Coastal Serv., Inc.*, 125 Ga. App. 28, 186 S.E.2d 441 (1971), *aff'd*,

Sales Price (Cont'd)

229 Ga. 471, 192 S.E.2d 372 (1972).

State cigarette tax imposed by former Code 1933, Ch. 92-22 is not an element of the cost of the property sold and is not, therefore, included in "gross sales" and "sales price" upon which the sales and use tax is calculated. *Blackmon v. Coastal Serv., Inc.*, 125 Ga. App. 28, 186 S.E.2d 441 (1971), aff'd, 229 Ga. 471, 192 S.E.2d 372 (1972).

Federal cigarette tax imposed by Subtitle E, Ch. 52 of the Internal Revenue Code of 1954 is an element of the cost of property sold and is therefore included in "gross sales" and "sales price." *Blackmon v. Coastal Serv., Inc.*, 125 Ga. App. 28, 186 S.E.2d 441 (1971), aff'd, 229 Ga. 471, 192 S.E.2d 372 (1972).

Federal manufacturer's excise tax imposed by § 4061 of the Internal Revenue Code of 1954 is an element of the cost of property sold and is therefore included in gross sales and sale price. *Undercoffer v. Capital Auto. Co.*, 111 Ga. App. 709, 143 S.E.2d 206 (1965).

Federal excise tax on gasoline is properly includable as a part of the retail sales price on which the sales and use tax is to be calculated. *State v. Thoni Oil Magic Benzol Gas Stations, Inc.*, 121 Ga. App. 454, 174 S.E.2d 224, aff'd, 226 Ga. 883, 178 S.E.2d 173 (1970).

State motor fuel tax is not taxable. — Motor fuel taxes imposed by former Code 1933, Ch. 92-14 are levied upon the incident of the sale to the consumer and should not be included as a part of the retail sales price for calculating the sales and use tax. *State v. Thoni Oil Magic Benzol Gas Stations, Inc.*, 121 Ga. App. 454, 174 S.E.2d 224, aff'd, 226 Ga. 883, 178 S.E.2d 173 (1970).

Discounts to employees on meals. — Discounts to employees on the price of meals, subsequently paid to cafeteria management by the employer, are subject to Ga. L. 1951, p. 360 (see O.C.G.A. Art 1, Ch. 8, T. 48). *Davis v. Chilivis*, 142 Ga. App. 679, 237 S.E.2d 2 (1977).

Tangible Personal Property

Fixtures which pass by conveyance of realty are exempt. — All fixtures

which would pass by a conveyance of an interest in realty as a part thereof, in the absence of provisions in the sales contract to the contrary, are exempt from the tax imposed by Ga. L. 1951, p. 360. *State v. Dyson*, 89 Ga. App. 791, 81 S.E.2d 217 (1954).

Video tape is tangible personal property. — Video tape can be seen and is perceptible to the senses and thereby satisfies the definition of tangible property. *Turner Communications Corp. v. Chilivis*, 239 Ga. 91, 236 S.E.2d 251 (1977).

Telephone system is not tangible personal property. — Sale of a complete, operating telephone system, including rights-of-way to which other equipment is attached, is not a sale of tangible personal property such as would be subject to sales tax. *State v. Dyson*, 89 Ga. App. 791, 81 S.E.2d 217 (1954).

Architectural plans. — Architectural plan, in its physical form, is obviously tangible, its finite mass lending weight and sensory perception. *State Farm Fire & Cas. Ins. Co. v. White*, 777 F. Supp. 952 (N.D. Ga. 1991).

Modular homes. — Although modular homes may become realty when those modular homes are affixed to the purchaser's lot, when those modular homes are transferred as partial units on trailers those modular homes are properly considered tangible personal property within the meaning of O.C.G.A. § 48-8-2(11). *Adrian Hous. Corp. v. Collins*, 253 Ga. 263, 319 S.E.2d 852 (1984).

Use Tax

Purchase outside state of tangible personal property to be transferred incident to service contract. — If a purchase is made outside the state and a transfer is then made incidental to performing a service within the state, the purchase is subject to a use tax. *L.M. Berry & Co. v. Blackmon*, 231 Ga. 659, 203 S.E.2d 520 (1974).

Direct mail advertising materials purchased by a corporation outside the state for distribution to residents within the state were subject to use tax. *Collins v. J.C. Penney Co.*, 218 Ga. App. 405, 461 S.E.2d 582 (1995).

Preprinted newspaper advertising inserts purchased by a corporation did not become a component or integral part of the newspaper through which the in-

serts were distributed and were subject to use tax. *Collins v. J.C. Penney Co.*, 218 Ga. App. 405, 461 S.E.2d 582 (1995).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

GENERAL CONSIDERATION

DEALER

LEASE OR RENTAL

RETAIL SALE

SALE

SALES PRICE

TANGIBLE PERSONAL PROPERTY

USE TAX

General Consideration

Constitutionality. — Imposition of use tax upon “cost price,” as defined by O.C.G.A. § 48-8-2(2), does not violate the commerce clause (U.S. Const., Art. 1, Sec. 8, Cl. 3) as it treats taxpayers printing own material out-of-state and taxpayers printing own material within the state equally. 1981 Op. Att’y Gen. No. 81-93.

Purchase of material from out-of-state printers for distribution in Georgia constitutes “use.” — Purchase by department stores within Georgia of advertising materials from out-of-state printers, shipped by printers to designated in-state direct mailing services, and distributed by such services to stores’ customers in Georgia constitutes “use” in Georgia by the stores within the meaning of O.C.G.A. § 48-8-2(12). 1981 Op. Att’y Gen. No. 81-93.

Dealer

Dual operator liable for tax on property consumed in performance of contract. — Since a dual operator, or person who, as a retail dealer, sells tangible personal property in performing contracts, is a consumer of the property used in performing contracts, irrespective of where the contracts may be performed, the person would owe sales tax in this state with respect to the purchase of such property in this state and would owe this state a use tax with respect to such property purchased outside this state and then brought to rest in this state. 1968 Op.

Att’y Gen. No. 68-96.

Nonresident subsidiary not made liable by resident subsidiary of same parent. — Resident subsidiary does not cause a nonresident mail order subsidiary of the same parent corporation to be subject to Ga. L. 1951, p. 360. 1969 Op. Att’y Gen. No. 69-132.

Lease or Rental

Legislative intent as to distinction between services and leases or rentals. — Analytically, if inquiry be pursued to the limit of its logic, it might be said that every lease or rental involves some element of service, while every service involves some utilization of personal property; but here as in all cases, the law does not deal in absolutes for the General Assembly has, by employing two concepts differing in their consequences, manifested the General Assembly’s intention that a line is to be drawn somewhere separating the areas of taxability and nontaxability. 1963-65 Op. Att’y Gen. p. 172.

What constitutes rental charge. — Rental charges mean the actual charges made for the leasing of tangible personal property without any deductions on account of the cost of materials used, service cost, or any other expenses, even though separately stated. 1970 Op. Att’y Gen. No. U70-47.

Sales tax is only based upon gross proceeds from rentals and is not to be imposed upon payment of royalties. 1954-56 Op. Att’y Gen. p. 845.

Lease or Rental (Cont'd)

Control is test as to whether property deemed leased. — Use of bank computers by customers for consideration, when customers have complete control over operation for an allotted time, is a lease or rental of computers and is subject to sales and use tax. 1969 Op. Att'y Gen. No. 69-128.

Bulldozer operator rendering personal services. — When the owner of a bulldozer furnishing earth-moving services is at all times in complete control and direction of the machine, such transaction constitutes merely the rendition of personal services and is not a leasing of the property so as to be subject to payment of the state sales tax. 1952-53 Op. Att'y Gen. p. 236.

Rental contracts which are completed fully within this state are subject to Ga. L. 1951, p. 360, notwithstanding the fact that physical possession of the rented property is delivered outside this state. 1969 Op. Att'y Gen. No. 69-146.

Lease or rental of vehicles not considered as rendering of transportation services. — Leasing or renting of trucks by lumber companies is subject to payment of the state sales tax, notwithstanding the fact that the goods transported are in interstate commerce, since it cannot be considered the rendering of transportation services, but is, in effect, a lease. 1952-53 Op. Att'y Gen. p. 242.

Retail Sale

Property bought for purposes of leasing or renting is bought for resale and the transaction is excluded as a sale subject to sales and use tax. 1960-61 Op. Att'y Gen. p. 551.

Personal service transactions in which no sales are involved are not "retail sales" or "sales at retail." 1952-53 Op. Att'y Gen. p. 236.

Taxation of sales to out-of-state locations. — When property is delivered pursuant to sales to out-of-state locations by a means of transportation which is leased or rented by the buyer, the sales occur in this state and are taxable under Ga. L. 1951, p. 360. 1969 Op. Att'y Gen. No. 69-146.

Automobile parts and accessories purchased by rental agency are held for purpose of resale. — Taxpayer engaged in the business of renting automobiles is exempt from the payment of sales tax upon automobiles, automobile accessories, tires and parts purchased by the taxpayer, since such property is purchased for the purpose of resale. 1952-53 Op. Att'y Gen. p. 482.

Sheriff making a sale of inventory and fixtures under fi. fa. is required to collect sales tax thereon unless the purchaser of such goods intends to resell the property purchased, in which case the purchaser should present a resale certificate. 1952-53 Op. Att'y Gen. p. 241.

Municipal corporation engaged in business of buying and distributing natural gas to customers in municipality is not exempt from paying sales and use tax. 1954-56 Op. Att'y Gen. p. 860.

Meals sold by restaurants and hotels to employees are taxable. 1950-51 Op. Att'y Gen. p. 420.

Admission charges to educational concerts are subject to state sales tax. 1952-53 Op. Att'y Gen. p. 228.

Schools must collect sales tax on admissions to school-sponsored functions. 1954-56 Op. Att'y Gen. p. 868.

State sales tax is imposed upon all sums deposited in pinball and music box machines, and is not limited to the share of receipts due either the owner of the vending machine or the party owning the premises where located. 1952-53 Op. Att'y Gen. p. 483.

Admission on basis of membership tantamount to purchase of tickets. — Membership in a theatrical corporation, members of which are entitled to admission to all productions, is tantamount to the purchasing of tickets and is therefore subject to payment of the state sales tax. 1952-53 Op. Att'y Gen. p. 228.

Admission fees charged by carnivals are subject to payment of the state sales tax, including charges for any rides or shows within the carnival. 1952-53 Op. Att'y Gen. p. 228.

Green fees or admission fees to golf courses are subject to sales tax, although no ticket or item of tangible personal property is issued. 1954-56 Op. Att'y Gen. p. 830.

Decision as to whether county-wide buying club constitutes a retail outlet for food stamp purposes. — Whether a county-wide buying club constitutes a retail outlet so as to qualify as a retail food store for the purpose of redeeming federal food stamps is a decision for the United States Secretary of Agriculture to make. 1970 Op. Att'y Gen. No. U70-81.

Sale

Sales tax applies to any transfer of title or possession, including that accomplished by barter. 1954-56 Op. Att'y Gen. p. 835.

Exemption is unavailable when otherwise exempt party furnishes materials to contractor for own benefit. — When the party contracting for construction enjoys exemption or immunity from sales and use taxes and purchases tangible personal property for the party's own use, the sale and use are exempt from the tax, but when such party purchases tangible personal property for the use of the party's contractor in the performance of the contract, even though the completed construction will be for the benefit of such party, it is not purchasing for the party's own use, and the exemption or immunity, otherwise available, does not apply. 1957 Op. Att'y Gen. p. 322.

Sales tax applies to purchase of machinery by an out-of-state purchaser if title passes in this state, even if the property is immediately removed from the state. 1971 Op. Att'y Gen. No. U71-92.

Sales of equipment delivered to purchasers outside state by common carrier. — Sales of equipment which is

delivered by common carriers procured by the seller to the out-of-state residences of the buyers are taxable. 1969 Op. Att'y Gen. No. 69-147.

Sales Price

Transportation costs as element of sales price. — Transportation costs are properly included in the total amount for which the property is sold as services which are part of the sale. The exemption provided for in Ga. L. 1951, p. 360 applies solely to those charges made for transportation services by a carrier, not incident to a sale of goods by the carrier. 1970 Op. Att'y Gen. No. 70-94.

Tangible Personal Property

Water is tangible personal property and the sale of water at retail is subject to sales tax, unless specifically exempted. 1963-65 Op. Att'y Gen. p. 294.

Use Tax

Tax on use of machinery belonging to nonresident corporation. — Use of machinery by a Georgia corporation, which machinery belongs to a nonresident corporation and for which the Georgia corporation pays a royalty, is subject to use tax. 1954-56 Op. Att'y Gen. p. 846.

Use tax on advertising materials purchased outside state. — Manufacturer who buys advertising materials outside state, ships those materials directly to dealers, at no cost to dealers, with dealers using the materials to promote local sales, is liable for use tax on such materials. 1962 Op. Att'y Gen. p. 556.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, §§ 50 et seq., 123.

C.J.S. — 84 C.J.S., Taxation, §§ 162 et seq., 174 et seq.

ALR. — What amounts to "sale at retail" within Sales Tax Act, 98 ALR 837; 111 ALR 943; 115 ALR 491; 139 ALR 372; 163 ALR 276; 171 ALR 697.

Deductibility of freight charges in determining amount of gross sales or receipts for purposes of statutes making gross

sales or receipts the subject or measure of a tax, 102 ALR 768.

Computation of sales tax, 150 ALR 1311.

Sale of building materials, supplies, or fixtures to contractor, or his use thereof in construction or repairs, as sale at retail within tax statute or ordinance, 163 ALR 276; 171 ALR 697.

Sale of building materials, supplies, or fixtures to contractor, or his use thereof in

construction or repair, as sale at retail within operation of sales tax statute or ordinance, 171 ALR 697.

What transactions constitute a "sale" within operation of sales tax law provision defining a sale as including a transfer of possession, license to use, or words to that effect, 172 ALR 1317.

Federal retail luxury or other excise tax as includable in amount on which state sales or use tax is computed, 43 ALR2d 862.

Sale by wholly owned subsidiary to parent corporation, or vice versa, as within retail sales tax, or similar, statute, 64 ALR2d 769.

Redemption of trading stamps or the like for merchandise as sale at retail within taxing statute, 80 ALR2d 1221.

Sales or use tax: deduction or exemption of discount or premium in computing amount of sales, 90 ALR2d 338.

What constitutes manufacturing and who is a manufacturer under tax laws, 17 ALR3d 7.

Applicability of sales tax to "tips" or service charges added in lieu of tips, 73 ALR3d 1226.

Reusable soft drink bottles as subject to sales or use taxes, 97 ALR3d 1205.

Applicability of sales or use taxes to motion pictures and video tapes, 10 ALR4th 1209.

Cable television equipment or services as subject to sales or use tax, 23 ALR6th 165.

48-8-3. Exemptions.

The sales and use taxes levied or imposed by this article shall not apply to:

(1) Sales to the United States government, this state, any county or municipality of this state, or any bona fide department of such governments when paid for directly to the seller by warrant on appropriated government funds;

(2) Transactions in which tangible personal property is furnished by the United States government or by a county or municipality of this state to any person who contracts to perform services for the governmental entity for the installation, repair, or extension of any public water, gas, or sewage system of the governmental entity when the tangible personal property is installed for general distribution purposes, notwithstanding Code Section 48-8-63 or any other provision of this article. No exemption is granted with respect to tangible personal property installed to serve a particular property site;

(3) The federal retailers' excise tax if the tax is billed to the consumer separately from the selling price of the product or from the tax imposed by Article 1 of Chapter 9 of this title relating to motor fuel taxes;

(4) Sales by counties and municipalities arising out of their operation of any public transit facility and sales by public transit authorities or charges by counties, municipalities, or public transit authorities for the transportation of passengers upon their conveyances;

(5)(A) Fares and charges, except charges for charter and sightseeing service, collected by an urban transit system for the transportation of passengers.

(B) As used in this paragraph, the term:

(i) "Public transit system primarily urban in character" shall include a transit system operated by any entity which provides passenger transportation services by means of motor vehicles having passenger-carrying capacity within or between standard metropolitan areas and urban areas, as those terms are defined in Code Section 32-2-3, of this state.

(ii) "Urban transit system" means a public transit system primarily urban in character which is operated by a street railroad company or a motor carrier, is subject to the jurisdiction of the Department of Public Safety, and whose fares and charges are regulated by the Department of Public Safety, or is operated pursuant to a franchise contract with a municipality of this state so that its fares and charges are regulated by or are subject to the approval of the municipality. An urban transit system certificate shall be issued by the Department of Public Safety, or by the municipality which has regulatory authority, upon an affirmative showing that the applicant operates an urban transit system. The certificate shall be obtained and filed with the commissioner and shall continue in effect so long as the holder of such certificate qualifies as an urban transit system. Any urban transit system certificate granted prior to January 1, 2002, shall be deemed valid as of the date it was issued;

(6) Sales to any hospital authority created by Article 4 of Chapter 7 of Title 31;

(6.1) Sales to any housing authority created by Article 1 of Chapter 3 of Title 8, the "Housing Authorities Law";

(6.2) Sales to any local government authority created on or after January 1, 1980, by local law, which authority has as its principal purpose or one of its principal purposes the construction, ownership, or operation of a coliseum and related facilities to be used for athletic contests, games, meetings, trade fairs, expositions, political conventions, agricultural events, theatrical and musical performances, conventions, or other public entertainments or any combination of such purposes;

(6.3) Sales to any agricultural commodities commission created by and regulated pursuant to Chapter 8 of Title 2;

(7) Sales of tangible personal property and services to a nonprofit licensed nursing home, nonprofit licensed in-patient hospice, or a

nonprofit general or mental hospital used exclusively by such nursing home, in-patient hospice, or hospital in performing a general nursing home, in-patient hospice, hospital, or mental hospital treatment function in this state when such nursing home, in-patient hospice, or hospital is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.05)(A) For the period commencing on July 1, 2008, and ending on June 30, 2010, sales of tangible personal property to a nonprofit health center in this state which has been established under the authority of and is receiving funds pursuant to the United States Public Health Service Act, 42 U.S.C. Section 254b if such health clinic obtains an exemption determination letter from the commissioner.

(B)(i) For the purposes of this paragraph, the term “local sales and use tax” shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the “Metropolitan Atlanta Rapid Transit Authority Act of 1965”; by or pursuant to Article 2, 2A, 3, or 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(7.1) Sales of tangible personal property and services to a nonprofit organization, the primary function of which is the provision of services to mentally retarded persons, when such organization is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.2) Sales of tangible personal property or services to any chapter of the Georgia State Society of the Daughters of the American Revolution which is tax exempt under Section 501(c)(3) of the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.3) For the period commencing July 1, 2008, and ending June 30, 2010, sales of tangible personal property and services to a nonprofit volunteer health clinic which primarily treats indigent persons with incomes below 200 percent of the federal poverty level and which property and services are used exclusively by such volunteer health clinic in performing a general treatment function in this state when such volunteer health clinic is a tax exempt organization under the

Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(8) Sales of tangible personal property and services to the University System of Georgia and its educational units;

(9) Sales of tangible personal property and services to be used exclusively for educational purposes by those private colleges and universities in this state whose academic credits are accepted as equivalents by the University System of Georgia and its educational units;

(10) Sales of tangible personal property and services to be used exclusively for educational purposes by those bona fide private elementary and secondary schools which have been approved by the commissioner as organizations eligible to receive tax deductible contributions if application for exemption is made to the department and proof of the exemption is established;

(11) Sales of tangible personal property or services to, and the purchase of tangible personal property or services by, any educational or cultural institute which:

(A) Is tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(B) Furnishes at least 50 percent of its programs through universities and other institutions of higher education in support of their educational programs;

(C) Is paid for by government funds of a foreign country; and

(D) Is an instrumentality, agency, department, or branch of a foreign government operating through a permanent location in this state;

(12) Food and food ingredients and prepared food sold and served to pupils and employees of public schools as part of a school lunch program;

(13) Sales of prepared food and food and food ingredients consumed by pupils and employees of bona fide private elementary and secondary schools which have been approved by the commissioner as organizations eligible to receive tax deductible contributions when application for exemption is made to the department and proof of the exemption is established;

(14) Sales of objects of art and of anthropological, archeological, geological, horticultural, or zoological objects or artifacts and other similar tangible personal property to or for the use by any museum or organization which is tax exempt under Section 501(c)(3) of the

Internal Revenue Code of such tangible personal property for display or exhibition in a museum within this state when the museum is open to the public and has been approved by the commissioner as an organization eligible to receive tax deductible contributions;

(15) Sales:

(A) Of any religious paper in this state when the paper is owned and operated by religious institutions or denominations and no part of the net profit from the operation of the institution or denomination inures to the benefit of any private person;

(B) By religious institutions or denominations when:

(i) The sale results from a specific charitable fundraising activity;

(ii) The number of days upon which the fundraising activity occurs does not exceed 30 in any calendar year;

(iii) No part of the gross sales or net profits from the sales inures to the benefit of any private person; and

(iv) The gross sales or net profits from the sales are used for the purely charitable purposes of:

(I) Relief to the aged;

(II) Church related youth activities;

(III) Religious instruction or worship; or

(IV) Construction or repair of church buildings or facilities;

(15.1) Sales of pipe organs or steeple bells to any church which is qualified as an exempt religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(16) The sale or use of Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture regardless of by or to whom sold;

(17) The sale of fuel and supplies for use or consumption aboard ships plying the high seas either in intercoastal trade between ports in this state and ports in other states of the United States or its possessions or in foreign commerce between ports in this state and ports of foreign countries;

(18) Charges made for the transportation of tangible personal property except delivery charges by the seller associated with the sale of taxable tangible personal property, including, but not limited to, charges for accessorial services such as refrigeration, switching,

storage, and demurrage made in connection with interstate and intrastate transportation of the property;

(19) All tangible personal property purchased outside of this state by persons who at the time of purchase are not domiciled in this state but who subsequently become domiciled in this state and bring the property into this state for the first time as a result of the change of domicile, if the property is not brought into this state for use in a trade, business, or profession;

(20) The sale of water delivered to consumers through water mains, lines, or pipes;

(21) Sales, transfers, or exchanges of tangible personal property made as a result of a business reorganization when the owners, partners, or stockholders of the business being reorganized maintain the same proportionate interest or share in the newly formed business reorganization;

(22) Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made;

(23) Fees or charges for services rendered by repairmen for which a separate charge is made;

(24) The rental of videotape or motion picture film to any person who charges an admission fee to view such film or videotape;

(25) Reserved;

(26) Reserved;

(27) Reserved;

(28) Reserved;

(29) Reserved;

(29.1) Reserved;

(30) The sale of a vehicle to a service-connected disabled veteran when the veteran received a grant from the United States Department of Veterans Affairs to purchase and specially adapt the vehicle to his disability;

(31) The sale of tangible personal property manufactured or assembled in this state for export when delivery is taken outside this state;

(32) Aircraft, watercraft, motor vehicles, and other transportation equipment manufactured or assembled in this state when sold by the manufacturer or assembler for use exclusively outside this state and

when possession is taken from the manufacturer or assembler by the purchaser within this state for the sole purpose of removing the property from this state under its own power when the equipment does not lend itself more reasonably to removal by other means;

(33)(A) The sale of aircraft, watercraft, railroad locomotives and rolling stock, motor vehicles, and major components of each, which will be used principally to cross the borders of this state in the service of transporting passengers or cargo by common carriers and by carriers who hold common carrier and contract carrier authority in interstate or foreign commerce under authority granted by the United States government. Replacement parts installed by carriers in such aircraft, watercraft, railroad locomotives and rolling stock, and motor vehicles which become an integral part of the craft, equipment, or vehicle shall also be exempt from all taxes under this article;

(B) In lieu of any tax under this article which would apply to the purchase, sale, use, storage, or consumption of the tangible personal property described in this paragraph but for this exemption, the tax under this article shall apply with respect to all fuel purchased and delivered within this state by or to any common carrier and with respect to all fuel purchased outside this state and stored in this state irrespective, in either case, of the place of its subsequent use;

(33.1)(A) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport, to the extent provided in subparagraphs (B) and (C) of this paragraph.

(B)(i) For the period of time beginning July 1, 2011, and ending June 30, 2012, the sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt from state sales and use tax until the aggregate state sales and use tax liability of the taxpayer during such period with respect to jet fuel exceeds \$20 million, computed as if the exemption provided in this division was not in effect during such period. Thereafter during such period, the exemption provided by this division shall not apply to the sale or use of jet fuel to or by the qualifying airline. For purposes of this division, the terms "qualifying airline" and "qualifying airport" shall have the same meanings as those terms were defined under the prior provisions of this paragraph as it existed immediately prior to July 1, 2012.

(ii) For the period of time beginning July 1, 2012, the sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt from 1 percent of the 4 percent state sales and use tax.

(C) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt at all times from the sales or use tax levied and imposed as authorized pursuant to Part 1 of Article 3 of this chapter. As used in this subparagraph, the term “qualifying airport” means any airport in this state that has had more than 750,000 takeoffs and landings during a calendar year, and the term “qualifying airline” shall have the same meaning as set forth in subparagraph (E) of this paragraph.

(D) Except as provided for in subparagraph (C) of this paragraph, this exemption shall not apply to any other local sales and use tax levied or imposed at any time in any area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the “Metropolitan Atlanta Rapid Transit Authority Act of 1965,” or such taxes as authorized by or pursuant to Part 2 of Article 3 or Article 2, 2A, or 4 of this chapter.

(E) For purposes of division (ii) of subparagraph (B) of this paragraph and paragraph (2) of subsection (d) of Code Section 48-8-241, a “qualifying airline” shall mean any person which is authorized by the Federal Aviation Administration or appropriate agency of the United States to operate as an air carrier under an air carrier operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire.

(F) For purposes of division (ii) of subparagraph (B) of this paragraph and paragraph (2) of subsection (d) of Code Section 48-8-241, the term “qualifying airport” means a certificated air carrier airport in Georgia.

(G) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph;

(34) Reserved;

(34.1)(A) The sale of primary material handling equipment which is used for the handling and movement of tangible personal property and racking systems used for the conveyance and storage of tangible personal property in a warehouse or distribution facility located in this state when such equipment is either part of an expansion worth \$5 million or more of an existing warehouse or distribution facility or part of the construction of a new warehouse or distribution facility where the total value of all real and personal property purchased or acquired by the taxpayer for use in the warehouse or distribution facility is worth \$5 million or more.

(B) In order to qualify for the exemption provided for in subparagraph (A) of this paragraph, a warehouse or distribution facility

may not make retail sales from such facility to the general public if the total of the retail sales equals or exceeds 15 percent of the total revenues of the warehouse or distribution facility. If retail sales are made to the general public by a warehouse or distribution facility and at any time the total of the retail sales equals or exceeds 15 percent of the total revenues of the facility, the taxpayer will be disqualified from receiving such exemption as of the date such 15 percent limitation is met or exceeded. The taxpayer may be required to repay any tax benefits received under subparagraph (A) of this paragraph on or after that date plus penalty and interest as may be allowed by law;

(34.2)(A) The sale or use of machinery or equipment, or both, which is used in the remanufacture of aircraft engines or aircraft engine parts or components in a remanufacturing facility located in this state. For purposes of this paragraph, "remanufacture of aircraft engines or aircraft engine parts or components" means the substantial overhauling or rebuilding of aircraft engines or aircraft engine parts or components.

(B) Any person making a sale of machinery or equipment, or both, for the remanufacture of aircraft engines or aircraft engine parts or components shall collect the tax imposed on the sale by this article unless the purchaser furnishes a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery or equipment without paying the tax;

(34.3) Reserved;

(34.4)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, sales of tangible personal property to, or used in or for the construction of, an alternative fuel facility primarily dedicated to the production and processing of ethanol, biodiesel, butanol, and their by-products, when such fuels are derived from biomass materials such as agricultural products, or from animal fats, or the wastes of such products or fats.

(B) As used in this paragraph, the term:

(i) "Alternative fuel facility" means any facility located in this state which is primarily dedicated to the production and processing of ethanol, biodiesel, butanol, and their by-products for sale.

(ii) "Used in or for the construction" means any tangible personal property incorporated into a new alternative fuel facility that loses its character of tangible personal property. Such term does not mean tangible personal property that is temporary in nature, leased or rented, tools, or other items not incorporated into the facility.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes an exemption certificate issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without payment of tax.

(D) Any corporation, partnership, limited liability company, or any other entity or person that qualifies for this exemption must conduct at least a majority of its business with entities or persons with which it has no affiliation.

(E) The exemption provided for under subparagraph (A) of this paragraph shall not apply to sales of tangible personal property that occur after the production and processing of biodiesel, ethanol, butanol, and their by-products has begun at the alternative fuel facility.

(F) The exemption provided for under subparagraph (A) of this paragraph shall apply only to sales occurring during the period July 1, 2007, through June 30, 2012.

(G) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph;

(35) Reserved;

(36)(A) The sale of machinery and equipment and any repair, replacement, or component parts for such machinery and equipment which is used for the primary purpose of reducing or eliminating air or water pollution;

(B) Any person making a sale of machinery and equipment or repair, replacement, or component parts for such machinery and equipment for the purposes specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes him with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery and equipment or repair, replacement, or component parts for such machinery and equipment without paying the tax;

(36.1)(A) The sale of machinery and equipment which is incorporated into any qualified water conservation facility and used for water conservation.

(B) As used in this paragraph, the term:

(i) "Qualified water conservation facility" means any facility, including buildings, and any machinery and equipment used in the water conservation process resulting in a minimum 10 percent reduction in permit by relinquishment or transfer of

annual permitted water usage from existing permitted ground-water sources. In addition, such facility shall have been certified pursuant to rules and regulations promulgated by the Department of Natural Resources as necessary to promote its ground-water management efforts for areas with a multiyear record of consumption at, near, or above sustainable use signaled by declines in ground-water pressure, threats of salt-water intrusion, need to develop alternate sources to accommodate economic growth and development, or any other indication of growing inadequacy of the existing resource.

(ii) "Water conservation" means a minimum 10 percent reduction resulting in the relinquishment of transfer of annual permitted water usage from existing ground-water sources due to increased manufacturing process efficiencies or recycling of manufacturing process water which results in reduced ground-water usage, or a change from a ground-water source to a surface-water source or an alternate source.

(C) Any person making a sale of machinery and equipment for the purposes specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery and equipment without paying the tax;

(37) Reserved;

(38) Sales of tangible personal property and fees and charges for services by the Rock Eagle 4-H Center;

(39) Sales by any public or private school containing any combination of grades kindergarten through 12 of tangible personal property, concessions, or tickets for admission to a school event or function, provided that the net proceeds from such sales are used solely for the benefit of such public or private school or its students;

(39.1) The use of cargo containers and their related chassis which are owned by or leased to persons engaged in the international shipment of cargo by ocean-going vessels which containers and chassis are directly used for the storage and shipment of tangible personal property in or through this state in intrastate or interstate commerce;

(40) The sale of major components and repair parts installed in military craft, vehicles, and missiles;

(41)(A) Sales of tangible personal property and services to a child-caring institution as defined in paragraph (1) of Code Section 49-5-3, as amended; a child-placing agency as defined in paragraph

(2) of Code Section 49-5-3, as amended; or a maternity home as defined in paragraph (14) of Code Section 49-5-3, as amended, when such institution, agency, or home is engaged primarily in providing child services and is a nonprofit, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and obtains an exemption determination letter from the commissioner; and

(B) Sales by an institution, agency, or home as described in subparagraph (A) of this paragraph when:

(i) The sale results from a specific charitable fundraising activity;

(ii) The number of days upon which the fundraising activity occurs does not exceed 30 in any calendar year;

(iii) No part of the gross sales or net profits from the sales inures to the benefit of any private person; and

(iv) The gross sales or net profits from the sales are used purely for charitable purposes in providing child services;

(42) The use by, or lease or rental of tangible personal property to, a person who acquires the property from another person where both persons are under 100 percent common ownership and where the person who furnishes, leases, or rents the property has:

(A) Previously paid sales or use tax on the property; or

(B) Been credited under Code Section 48-8-42 with paying a sales or use tax on the property so furnished, leased, or rented, and the tax credited is based upon the fair rental or lease value of the property;

(43) Gross revenues generated from all bona fide coin operated amusement machines which vend or dispense music or are operated for skill, amusement, entertainment, or pleasure which are in commercial use and are provided to the public for play which will require a permit fee under Chapter 27 of Title 50;

(44) Sales of motor vehicles, as defined in Code Section 48-5-440, to nonresident purchasers for immediate transportation to and use in another state in which the vehicles are required to be registered, provided the seller obtains from the purchaser and retains an affidavit stating the name and address of the purchaser, the state in which the vehicle will be registered and operated, the make, model, and serial number of the vehicle, and such other information as the commissioner may require;

(45) The sale, use, storage, or consumption of paper stock which is manufactured in this state into catalogs intended to be delivered outside this state for use outside this state;

(46) Sales to blood banks having a nonprofit status pursuant to Section 501(c)(3) of the Internal Revenue Code;

(47)(A)(i) The sale or use of drugs which are lawfully dispensable only by prescription for the treatment of natural persons, the sale or use of insulin regardless of whether the insulin is dispensable only by prescription, and the sale or use of prescription eyeglasses and contact lenses including, without limitation, prescription contact lenses distributed by the manufacturer to licensed dispensers as free samples not intended for resale and labeled as such; and

(ii) The sale or use of drugs lawfully dispensable by prescription for the treatment of natural persons which are dispensed or distributed without charge to physicians, dentists, clinics, hospitals, or any other person or entity located in Georgia by a pharmaceutical manufacturer or distributor; and the use of drugs and durable medical equipment lawfully dispensed or distributed without charge solely for the purposes of a clinical trial approved by either the United States Food and Drug Administration or by an institutional review board.

(B) For purposes of this paragraph, the term:

(i) "Drug" means the same as provided in Code Section 48-8-2 but shall not include over-the-counter drugs or tobacco.

(ii) "Institutional review board" means an institutional review board as provided in 21 C.F.R. Section 56.

(C) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(48) Sales to licensed commercial fishermen of bait for taking crabs and the use by licensed commercial fishermen of bait for taking crabs;

(49) Reserved;

(49.1)(A) From July 1, 2008, until June 30, 2010, the sale or use of liquefied petroleum gas or other fuel used in a structure in which swine are raised.

(B)(i) For the purposes of this paragraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; by or

pursuant to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; by or pursuant to Part 1 of Article 3 of this chapter; by or pursuant to Part 2 of Article 3 of this chapter; and by or pursuant to Article 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time;

(50) Sales of insulin syringes and blood glucose level measuring strips dispensed without a prescription;

(51) Sales of oxygen prescribed by a licensed physician;

(52) The sale or use of hearing aids;

(53) Sales transactions for which food stamps or WIC coupons are used as the medium of exchange;

(54) The sale or use of any durable medical equipment that is sold or used pursuant to a prescription or prosthetic device that is sold or used pursuant to a prescription;

(55) The sale of lottery tickets authorized by Chapter 27 of Title 50;

(56) Sales by any parent-teacher organization qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code;

(57)(A) The sale of food and food ingredients to an individual consumer for off-premises human consumption, to the extent provided in this paragraph.

(B) For the purposes of this paragraph, the term “food and food ingredients” as defined in Code Section 48-8-2 shall not include prepared food, drugs, or over-the-counter drugs.

(C) The exemption provided for in this paragraph shall not apply to the sale or use of food and food ingredients when purchased for any use in the operation of a business.

(D)(i) The exemption provided for in this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(ii) For the purposes of this subparagraph, the term “local sales and use tax” shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the “Metro-

politan Atlanta Rapid Transit Authority Act of 1965”; or by or pursuant to any article of this chapter.

(E) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph;

(57.1)(A) From July 1, 2006, until June 30, 2010, sales of food and food ingredients to a qualified food bank.

(B) As used in this paragraph, the term “qualified food bank” means any food bank which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which is operated primarily for the purpose of providing hunger relief to low income persons residing in this state.

(C) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(57.2)(A) For the period commencing July 1, 2007, and ending on June 30, 2011, the use of prepared food which is donated to a qualified nonprofit agency and which is used for hunger relief purposes.

(B) As used in this paragraph, the term “qualified nonprofit agency” means any entity which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which provides hunger relief.

(C) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(57.3)(A) For the period commencing July 1, 2007, and ending on June 30, 2011, the use of prepared food which is donated following a natural disaster and which is used for disaster relief purposes.

(B) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(58) Reserved;

(59)(A) Sales of food and food ingredients to and by member councils of the Girl Scouts of the U.S.A. in connection with fundraising activities of any such council.

(B) Sales of food and food ingredients to and by member councils of the Boy Scouts of America in connection with fundraising activities of any such council;

(60) The sale of machinery and equipment which is incorporated into any telecommunications manufacturing facility and used for the

primary purpose of improving air quality in advanced technology clean rooms of Class 100,000 or less, provided such clean rooms are used directly in the manufacture of tangible personal property;

(61) Printed advertising inserts or advertising supplements distributed in this state in or as part of any newspaper for resale;

(62) The sale of grass sod of all kinds and character when such sod is in the original state of production or condition of preparation for sale. The exemption provided for by this paragraph shall only apply to a sale made by the sod producer, a member of such producer's family, or an employee of such producer. The exemption provided for by this paragraph shall not apply to sales of grass sod by a person engaged in the business of selling plants, seedlings, nursery stock, or floral products;

(63) The sale or use of funeral merchandise, outer burial containers, and cemetery markers as defined in Code Section 43-18-1, which are purchased with funds received from the Georgia Crime Victims Emergency Fund under Chapter 15 of Title 17;

(64) Reserved;

(65)(A) Sales of dyed diesel fuel exclusively used to operate vessels or boats in the commercial fishing trade by licensed commercial fishermen.

(B) Any person making a sale of dyed diesel fuel for the purposes specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes such person with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the dyed diesel fuel without paying the tax;

(66) Sales of gold, silver, or platinum bullion or any combination of such bullion, provided that the dealer maintains proper documentation, as specified by rule or regulation to be promulgated by the department, to identify each sale or portion of a sale which is exempt under this paragraph;

(67) Sales of coins or currency or a combination of coins and currency, provided that the dealer maintains proper documentation, as specified by rule or regulation to be promulgated by the department, to identify each sale or portion of a sale which is exempt under this paragraph;

(68)(A) The sale or lease of computer equipment to be incorporated into a facility or facilities in this state to any high-technology company classified under North American Industrial Classification System code 51121, 51331, 51333, 51334, 51421, 52232, 54133, 54171, 54172, 334413, 334611, 513321, 513322, 514191, 541511,

541512, 541513, or 541519 where such sale of computer equipment for any calendar year exceeds \$15 million or, in the event of a lease of such computer equipment, the fair market value of such leased computer equipment for any calendar year exceeds \$15 million.

(B) Any person making a sale or lease of computer equipment to a high-technology company as specified in subparagraph (A) of this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes such seller with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the computer equipment without paying the tax. As a condition precedent to the issuance of the certificate, the commissioner, at such commissioner's discretion, may require a good and valid bond with a surety company authorized to do business in this state as surety or may require legal securities, in an amount fixed by the commissioner, conditioned upon payment by the purchaser of all taxes due under this article in the event it should be determined that the sale fails to meet the requirements of this subparagraph.

(C)(i) As used in this paragraph, the term "computer equipment" means any individual computer or organized assembly of hardware or software, such as a server farm, mainframe or midrange computer, mainframe driven high-speed print and mailing devices, and workstations connected to those devices via high bandwidth connectivity such as a local area network, wide area network, or any other data transport technology which performs one of the following functions: storage or management of production data, hosting of production applications, hosting of application systems development activities, or hosting of applications systems testing.

(ii) The term shall not include:

(I) Telephone central office equipment or other voice data transport technology; or

(II) Equipment with imbedded computer hardware or software which is primarily used for training, product testing, or in a manufacturing process.

(D) Any corporation, partnership, limited liability company, or any other similar entity which qualifies for the exemption and is affiliated in any manner with a nonqualified corporation, partnership, limited liability company, or any other similar entity must conduct at least a majority of its business with entities with which it has no affiliation;

(69) The sale of machinery, equipment, and materials incorporated into and used in the construction or operation of a clean room of Class

100 or less in this state, not to include the building or any permanent, nonremovable component of the building that houses such clean room, provided that such clean room is used directly in the manufacture of tangible personal property in this state;

(70)(A) For the purposes of this paragraph, the term “local sales and use tax” shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the “Metropolitan Atlanta Rapid Transit Authority Act of 1965”; by or pursuant to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; by or pursuant to Part 1 of Article 3 of this chapter; or by or pursuant to Part 2 of Article 3 of this chapter.

(B) The sale of natural or artificial gas used directly in the production of electricity which is subsequently sold.

(C) The exemption provided for in subparagraph (B) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph;

(70.1)(A) For the period commencing July 1, 2008, and concluding on December 31, 2010, the sale of natural or artificial gas, No. 2 fuel oil, No. 6 fuel oil, propane, petroleum coke, and coal used directly or indirectly in the manufacture or processing, in a manufacturing plant located in this state, of tangible personal property primarily for resale, and the fuel cost recovery component of retail electric rates used directly or indirectly in the manufacture or processing, in a manufacturing plant located in this state, of tangible personal property primarily for resale.

(B) The exemption provided for in subparagraph (A) of this paragraph shall not apply to the first \$7.60 per decatherm of the sales price or cost price of natural or artificial gas, the first \$2.48 per gallon of the sales price or cost price of No. 2 fuel oil, the first \$1.72 per gallon of the sales price or cost price of No. 6 fuel oil, the first \$1.44 per gallon of the sales price or cost price of propane, the first \$57.90 per ton of petroleum coke, the first \$57.90 per ton of coal, or the first 3.44¢ per kilowatt hour of the fuel cost recovery component of retail electricity rates whether such fuel recovery charges are charged separately or are embedded in such electric rates. Dealers with such embedded rates may exempt from the electricity sales upon which the sales tax is calculated no more than

the amount, if any, by which the fuel cost recovery charge approved by the Georgia Public Service Commission for transmission customers of electric utilities regulated by the Georgia Public Service Commission exceeds 3.44¢ per kilowatt hour.

(C)(i) For the purposes of this paragraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) Any person making a sale of items qualifying for exemption under subparagraph (A) of this paragraph shall be relieved of the burden of proving such qualification if the person receives in good faith a certificate from the purchaser certifying that the purchase is exempt under this paragraph.

(E) Any person who qualifies for this exemption shall notify and certify to the person making the qualified sale that this exemption is applicable to the sale;

(71) Sales to or by any nonprofit organization which has as its primary purpose the raising of funds for books, materials, and programs for public libraries if such organization qualifies as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code;

(72) The sale or use of all mobility enhancing equipment prescribed by a physician;

(73) Reserved;

(74)(A)(i) Except as otherwise provided in divisions (ii) and (iii) of this subparagraph, the sale or use of digital broadcast equipment sold to, leased to, or used by a federally licensed commercial or public radio or television broadcast station, a cable network, or a cable distributor that enables a radio or television station, cable network, or cable distributor to originate and broadcast or transmit or to receive and broadcast or transmit digital signals, including, but not limited to, digital broadcast equipment required by the Federal Communications Commission.

(ii) For commercial or public television broadcasters and cable distributors, such equipment shall be limited to antennas, transmission lines, towers, digital transmitters, studio to transmitter links, digital routing switchers, character generators, Advanced Television Systems Committee video encoders and multiplexers, monitoring facilities, cameras, terminal equipment, tape recorders, and file servers.

(iii) For radio broadcasters, such equipment shall be limited to transmitters, digital audio processors, and diskettes.

(B) As used in this paragraph, the term:

(i) "Digital broadcast equipment" means equipment purchased, leased, or used for the origination or integration of program materials for broadcast over the airwaves or transmission by cable, satellite, or fiber optic line which uses or produces an electronic signal where the signal carries data generated, stored, and processed as strings of binary data. Data transmitted or stored as digital data consists of strings of positive or nonpositive elements of a transmission expressed in strings of 0's and 1's which a computer or processor can reconstruct as an electronic signal.

(ii) "Federally licensed commercial or public radio or television broadcast station" means any entity or enterprise, either commercial or noncommercial, which operates under a license granted by the Federal Communications Commission for the purpose of free distribution of audio and video services when the distribution occurs by means of transmission over the public airwaves.

(C) The exemption provided under this paragraph shall not apply to any of the following:

(i) Repair or replacement parts purchased for the equipment described in this paragraph;

(ii) Equipment purchased to replace equipment for which an exemption was previously claimed and taken under this paragraph;

(iii) Any equipment purchased after a television station, cable network, or cable distributor has ceased analog broadcasting, or purchased after November 1, 2004, whichever occurs first; or

(iv) Any equipment purchased after a radio station has ceased analog broadcasting, or purchased after November 1, 2008, whichever occurs first.

(D) Any person making a sale of digital broadcasting equipment to a federally licensed commercial or public radio or television

broadcast station, cable network, or cable distributor shall collect the tax imposed on the sale by this article unless the purchaser furnishes a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the equipment without paying the tax;

(75)(A) The sale of any covered item. The exemption provided by this paragraph shall apply only to sales occurring during periods:

(i) Commencing at 12:01 A.M. on August 10, 2012, and concluding at 12:00 Midnight on August 11, 2012; and

(ii) Commencing at 12:01 A.M. on August 9, 2013, and concluding at 12:00 Midnight on August 10, 2013.

(B) As used in this paragraph, the term "covered item" shall mean:

(i) Articles of clothing and footwear with a sales price of \$100.00 or less per article of clothing or pair of footwear, excluding accessories such as jewelry, handbags, umbrellas, eyewear, watches, and watchbands;

(ii) A single purchase, with a sales price of \$1,000.00 or less, of personal computers and personal computer related accessories purchased for noncommercial home or personal use, including personal computer base units and keyboards, personal digital assistants, handheld computers, monitors, other peripheral devices, modems for Internet and network access, and nonrecreational software, whether or not they are to be utilized in association with the personal computer base unit. Computer and computer related accessories shall not include furniture and any systems, devices, software, or peripherals designed or intended primarily for recreational use; and

(iii) Noncommercial purchases of general school supplies to be utilized in the classroom or in classroom related activities, such as homework, up to a sales price of \$20.00 per item including pens, pencils, notebooks, paper, book bags, calculators, dictionaries, thesauruses, and children's books and books listed on approved school reading lists for pre-kindergarten through twelfth grade.

(C) The exemption provided by this paragraph shall not apply to rentals, sales in a theme park, entertainment complex, public lodging establishment, restaurant, or airport or to purchases for trade, business, or resale.

(D) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph

including but not be limited to a list of those articles and items qualifying for the exemption pursuant to this paragraph;

(76) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from June 4, 2003, until January 1, 2007, sales of tangible personal property to, or used in the construction of, an aquarium owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(77) Reserved;

(78)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from May 5, 2004, until September 1, 2011, sales of tangible personal property used in direct connection with the construction of a new symphony hall facility owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code if the aggregate construction cost of such facility is \$200 million or more.

(B) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(79) Reserved;

(80)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from May 17, 2004, until December 31, 2007, sales of tangible personal property to, or used in or for the new construction of an eligible corporate attraction.

(B) As used in this paragraph, the term: "corporate attraction" means any tourist attraction facility constructed on or after May 17, 2004, dedicated to the history and products of a corporation which costs exceeds \$50 million, is greater than 60,000 square feet of space, and has associated facilities, including but not limited to parking decks and landscaping owned by the same owner as the eligible corporate attraction.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(81) The sale of food and food ingredients to a qualifying airline for service to passengers and crew in the aircraft, whether in flight or on

the ground, and the furnishing without charge of food and food ingredients to qualifying airline passengers and crew in the aircraft, whether in flight or on the ground; and for purposes of this paragraph a "qualifying airline" shall mean any person which is authorized by the Federal Aviation Administration or appropriate agency of the United States to operate as an air carrier under an air carrier operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire. As used in this paragraph, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" shall not include alcoholic beverages or tobacco;

(82)(A) Purchase of energy efficient products or water efficient products with a sales price of \$1,500.00 or less per product purchased for noncommercial home or personal use. The exemption provided by this paragraph shall apply only to sales occurring during periods:

(i) Commencing at 12:01 A.M. on October 5, 2012, and concluding at 12:00 Midnight on October 7, 2012; and

(ii) Commencing at 12:01 A.M. on October 4, 2013, and concluding at 12:00 Midnight on October 6, 2013.

(B) As used in this paragraph, the term:

(i) "Energy efficient product" means any energy efficient product for noncommercial home or personal use consisting of any dishwasher, clothes washer, air conditioner, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, door, or window which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's energy saving efficiency requirements or which have been designated as meeting or exceeding such requirements under each such agency's Energy Star program.

(ii) "Water efficient product" means any product used for the conservation or efficient use of water which has been designated by the United States Environmental Protection Agency as meeting or exceeding such agency's water saving efficiency requirements or which has been designated as meeting or exceeding such requirements under such agency's Water Sense program.

(C) The exemption provided for in subparagraph (A) of this paragraph shall not apply to purchases of energy efficient products or water efficient products purchased for trade, business, or resale.

(D) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph;

(83)(A) The sale or use of biomass material, including pellets or other fuels derived from compressed, chipped, or shredded biomass material, utilized in the production of energy, including without limitation the production of electricity, steam, or the production of electricity and steam, which is subsequently sold.

(B) As used in this paragraph, the term “biomass material” means organic matter, excluding fossil fuels, including agricultural crops, plants, trees, wood, wood wastes and residues, sawmill waste, sawdust, wood chips, bark chips, and forest thinning, harvesting, or clearing residues; wood waste from pallets or other wood demolition debris; peanut shells; pecan shells; cotton plants; corn stalks; and plant matter, including aquatic plants, grasses, stalks, vegetation, and residues, including hulls, shells, or cellulose containing fibers;

(84)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2006, until June 30, 2008, sales of tangible personal property used in direct connection with the construction of a national infantry museum and heritage park facility.

(B) As used in this paragraph, the term “national infantry museum and heritage park facility” means a museum and park facility which is constructed after July 1, 2006; is dedicated to the history of the American foot soldier; has more than 130,000 square feet of space; and has associated facilities, including, but not limited to, parking, parade grounds, and memorial areas.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(85) Reserved;

(86) For the period commencing on July 1, 2007, and ending on June 30, 2015, the sale or use of engines, parts, equipment, and other tangible personal property used in the maintenance or repair of aircraft when such engines, parts, equipment, and other tangible personal property are installed on such aircraft that is being repaired or maintained in this state so long as such aircraft is not registered in this state;

(87)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2013, until June 30, 2015, sales of

tangible personal property used for and in the renovation or expansion of a zoological institution.

(B) As used in this paragraph, the term “zoological institution” means a nonprofit wildlife park, terrestrial institution, or facility which:

(i) Is open to the public, exhibits and cares for a collection consisting primarily of animals other than fish, and has received accreditation from the Association of Zoos and Aquariums; and

(ii) Is located in this state and owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(88)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2009, until July 30, 2015, sales of tangible personal property to, or used in or for the new construction of, a civil rights museum.

(B) As used in this paragraph, the term “civil rights museum” means a museum which is constructed after July 1, 2009; is owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; has more than 70,000 square feet of space; and has associated facilities, including, but not limited to, special event space and retail space.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax.

(D) The exemption provided for under subparagraph (A) of this paragraph shall not apply to sales of tangible personal property that occur after the museum is opened to the public;

(89) For the period commencing on July 1, 2009, and ending on June 30, 2011, the sale or use of an airplane flight simulation training device approved by the Federal Aviation Administration under Appendices A and B, 14 C.F.R. Part 60;

(90) Reserved;

(91) The sale of prewritten software which has been delivered to the purchaser electronically or by means of load and leave;

(92) For the period commencing July 1, 2012, and ending on December 31, 2013, sales to an organization defined by the Internal Revenue Service as an instrumentality of the states relating to the holding of an annual meeting in this state;

(93)(A) For the period commencing January 1, 2012, until June 30, 2014, sales of tangible personal property used for and in the construction of a competitive project of regional significance.

(B) The exemption provided in subparagraph (A) of this paragraph shall apply to purchases made during the entire time of construction of the competitive project of regional significance so long as such project meets the definition of a “competitive project of regional significance” within the period commencing January 1, 2012, until June 30, 2014.

(C) The department shall not be required to pay interest on any refund claims filed for local sales and use taxes paid on purchases made prior to the implementation of this paragraph.

(D) As used in this paragraph, the term “competitive project of regional significance” means the location or expansion of some or all of a business enterprise’s operations in this state where the commissioner of economic development determines that the project would have a significant regional impact. The commissioner of economic development shall promulgate regulations in accordance with the provisions of this paragraph outlining the guidelines to be applied in making such determination;

(94) The sale, use, consumption, or storage of materials, containers, labels, sacks, or bags used for packaging tangible personal property for shipment or sale. To qualify for the packaging exemption, the items shall be used solely for packaging and shall not be purchased for reuse. The packaging exemption shall not include materials purchased at a retail establishment for consumer use; or

(95) The sale or purchase of any motor vehicle titled in this state on or after March 1, 2013, pursuant to Code Section 48-5C-1. Except as otherwise provided in this paragraph, this exemption shall not apply to rentals of motor vehicles for periods of 31 or fewer consecutive days. Lease payments for a motor vehicle that is leased for more than 31 consecutive days for which a state and local title ad valorem tax is paid shall be exempt from sales and use taxes as provided for in this paragraph. No sales and use taxes shall be imposed upon state and local title ad valorem tax fees imposed pursuant to Chapter 5C of this title as a part of the purchase price of a motor vehicle or any

portion of a lease or rental payment that is attributable to payment of state and local title ad valorem tax fees under Chapter 5C of this title. (Ga. L. 1951, p. 360, §§ 3, 22; Ga. L. 1953, Jan.-Feb. Sess., p. 182, §§ 1, 2; Ga. L. 1953, Jan.-Feb. Sess., p. 191, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 192, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 194, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 199, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 301, § 1; Ga. L. 1960, p. 153, § 2; Ga. L. 1963, p. 13, § 1; Ga. L. 1963, p. 132, § 1; Ga. L. 1963, p. 613, § 1; Ga. L. 1964, p. 57, § 3; Ga. L. 1964, p. 206, § 1; Ga. L. 1964, p. 672, § 1; Ga. L. 1965, p. 13, § 1; Ga. L. 1966, p. 211, § 1; Ga. L. 1966, p. 507, § 1; Ga. L. 1966, p. 537, §§ 1, 2; Ga. L. 1967, p. 282, § 1; Ga. L. 1967, p. 283, § 1; Ga. L. 1967, p. 286, § 1; Ga. L. 1968, p. 129, § 1; Ga. L. 1968, p. 136, § 1; Ga. L. 1968, p. 201, § 1; Ga. L. 1968, p. 545, § 1; Ga. L. 1968, p. 559, § 1; Ga. L. 1970, p. 16, § 1; Ga. L. 1970, p. 252, § 2; Ga. L. 1970, p. 254, § 1; Ga. L. 1970, p. 460, § 1; Ga. L. 1970, p. 631, § 1; Ga. L. 1971, p. 80, § 1; Ga. L. 1971, p. 265, § 1; Ga. L. 1971, p. 474, § 1; Ga. L. 1971, p. 653, § 1; Ga. L. 1972, p. 457, § 1; Ga. L. 1972, p. 504, § 1; Ga. L. 1973, p. 276, § 1; Ga. L. 1976, p. 411, § 1; Ga. L. 1976, p. 672, § 1; Ga. L. 1976, p. 987, § 1; Ga. L. 1977, p. 590, § 1; Code 1933, § 91A-4503, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 1160, §§ 1-4; Ga. L. 1978, p. 1634, § 1; Ga. L. 1978, p. 1664, § 2; Ga. L. 1978, p. 1666, § 1; Ga. L. 1979, p. 5, §§ 85-92; Ga. L. 1979, p. 1278, §§ 1, 2; Ga. L. 1980, p. 10, §§ 25, 26; Ga. L. 1980, p. 586, § 1; Ga. L. 1980, p. 805, § 1; Ga. L. 1980, p. 1188, § 1; Ga. L. 1981, p. 1857, § 41; Ga. L. 1984, p. 1466, § 1; Ga. L. 1985, p. 491, § 1; Ga. L. 1985, p. 624, § 1; Ga. L. 1985, p. 625, § 1; Ga. L. 1985, p. 1177, § 1; Ga. L. 1986, p. 10, § 48; Ga. L. 1986, p. 1453, § 1; Ga. L. 1986, p. 1459, § 1; Ga. L. 1986, p. 1464, § 2; Ga. L. 1986, p. 1467, §§ 1, 2; Ga. L. 1986, p. 1584, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 1989, p. 62, §§ 2, 3; Ga. L. 1989, p. 622, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 1991, p. 87, § 2; Ga. L. 1992, p. 1276, § 1; Ga. L. 1992, p. 1521, § 2; Ga. L. 1992, p. 3173, § 1; Ga. L. 1994, p. 132, § 1; Ga. L. 1994, p. 552, § 1; Ga. L. 1994, p. 928, §§ 5, 6; Ga. L. 1994, p. 1269, § 1; Ga. L. 1995, p. 364, § 1; Ga. L. 1995, p. 585, § 8; Ga. L. 1995, p. 991, § 1; Ga. L. 1995, p. 1302, §§ 13, 14; Ga. L. 1996, p. 1, § 1; Ga. L. 1996, p. 220, §§ 8-10; Ga. L. 1996, p. 738, § 1; Ga. L. 1996, p. 1025, § 2; Ga. L. 1996, p. 1643, §§ 1-3; Ga. L. 1997, p. 157, § 1; Ga. L. 1997, p. 1295, § 1; Ga. L. 1997, p. 1412, §§ 1, 2; Ga. L. 1998, p. 128, § 48; Ga. L. 1998, p. 602, §§ 1-3; Ga. L. 1999, p. 634, §§ 1, 2; Ga. L. 2000, p. 409, § 1; Ga. L. 2000, p. 411, § 1; Ga. L. 2000, p. 414, § 1; Ga. L. 2000, p. 415, § 1; Ga. L. 2000, p. 468, § 1; Ga. L. 2000, p. 485, § 1; Ga. L. 2000, p. 615, §§ 1-3; Ga. L. 2000, p. 1202, §§ 1, 2; Ga. L. 2001, p. 4, § 48; Ga. L. 2001, p. 202, §§ 1, 2; Ga. L. 2001, p. 984, §§ 13-16; Ga. L. 2001, p. 1049, § 1; Ga. L. 2001, p. 1068, § 1; Ga. L. 2002, p. 6, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 575, § 1; Ga. L. 2002, p. 804, § 1; Ga. L. 2002, p. 855, § 1; Ga. L. 2002, p. 954, § 3; Ga. L. 2002, p. 984, § 1; Ga. L.

2003, p. 337, § 1; Ga. L. 2003, p. 665, §§ 11, 12; Ga. L. 2004, p. 154, § 1; Ga. L. 2004, p. 328, § 1; Ga. L. 2004, p. 403, § 1; Ga. L. 2004, p. 628, § 1; Ga. L. 2004, p. 690, § 22; Ga. L. 2004, p. 947, § 1; Ga. L. 2004, p. 1073, § 1; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 142, §§ 1, 2/HB 487; Ga. L. 2005, p. 334, § 29-6/HB 501; Ga. L. 2005, p. 725, §§ 1, 2, 3, 4/HB 341; Ga. L. 2005, p. 794, § 1/HB 559; Ga. L. 2005, p. 983, § 1/HB 5; Ga. L. 2006, p. 222, § 1/HB 1014; Ga. L. 2006, p. 263, § 1/HB 1018; Ga. L. 2006, p. 419, § 1/HB 834; Ga. L. 2006, p. 471, § 1/HB 1301; Ga. L. 2006, p. 524, §§ 1, 2/HB 1219; Ga. L. 2006, p. 527, § 1/HB 1121; Ga. L. 2006, p. 538, § 1/HB 841; Ga. L. 2007, p. 47, § 48/SB 103; Ga. L. 2007, p. 207, §§ 1, 2/HB 128; Ga. L. 2007, p. 419, § 1/HB 186; Ga. L. 2007, p. 594, § 1/HB 169; Ga. L. 2007, p. 604, § 1/HB 282; Ga. L. 2007, p. 709, § 1/HB 193; Ga. L. 2008, p. 316, § 1/HB 1178; Ga. L. 2008, p. 340, §§ 1, 2/HB 948; Ga. L. 2008, p. 644, § 3-1/SB 342; Ga. L. 2008, p. 739, §§ 1, 2, 3/HB 957; Ga. L. 2008, p. 773, § 1/HB 1078; Ga. L. 2008, p. 1148, § 1/HB 1023; Ga. L. 2008, p. 1151, § 1/HB 1110; Ga. L. 2008, p. 1160, § 1/HB 237; Ga. L. 2008, p. 1163, § 1/HB 272; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 79, § 2/HB 59; Ga. L. 2009, p. 636, § 1/HB 116; Ga. L. 2009, p. 637, §§ 1, 2/HB 120; Ga. L. 2009, p. 642, § 1/HB 212; Ga. L. 2009, p. 650, § 1/HB 358; Ga. L. 2009, p. 651, § 1/HB 395; Ga. L. 2009, p. 777, § 1/HB 129; Ga. L. 2009, p. 794, § 1/HB 349; Ga. L. 2009, p. 795, § 1/HB 364; Ga. L. 2010, p. 662, § 2/HB 1221; Ga. L. 2011, p. 38, § 4/HB 168; Ga. L. 2011, p. 47, § 1/HB 322; Ga. L. 2011, p. 302, § 1/HB 234; Ga. L. 2012, p. 257, §§ 1-5, 4-1, 5-1, 5-5, 5-6, 6-2/HB 386; Ga. L. 2012, p. 580, § 18/HB 865; Ga. L. 2012, p. 694, § 4/HB 729; Ga. L. 2012, p. 775, § 48/HB 942; Ga. L. 2012, p. 1348, § 2/HB 743; Ga. L. 2013, p. 7, § 4/HB 266; Ga. L. 2013, p. 37, § 2-2/HB 487; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2013, p. 190, § 1/HB 164; Ga. L. 2013, p. 243, § 6.1/HB 318.)

The 2011 amendments. — The first 2011 amendment, effective April 27, 2011, in paragraph (12), substituted “Food and food ingredients and prepared food” for “School lunches” at the beginning and added “as part of a school lunch program” at the end; in paragraph (18), inserted “except delivery charges by the seller associated with the sale of taxable tangible personal property,”; in division (47)(A)(i), deleted “controlled substances and” following “sale or use of”, substituted “dispensable only” for “dispensed”, substituted “the sale or use” for “sales”, and substituted “; and” for a period at the end; in division (47)(A)(ii), deleted “those controlled substances and” following “sale or use of”, substituted “drugs and durable

medical equipment” for “controlled substances, drugs, new animal drugs, and medical devices”; in subparagraph (47)(B), deleted division (47)(B)(i), which read: “‘Controlled substance’ means the same as provided in Code Section 16-13-1.”; redesignated former divisions (47)(B)(ii) and (47)(B)(iii) as present divisions (47)(B)(i) and (47)(B)(ii), respectively; in division (47)(B)(i), added “but shall not include over-the-counter drugs or tobacco” at the end; deleted division (47)(B)(iv), which read: “‘Medical device’ means a device as defined in subsection (h) of 21 U.S.C. Section 321.”; deleted division (47)(B)(v), which read: “‘New animal drug’ means a new animal drug as defined in subsection (v) of 21 U.S.C. Section 321.”;

in paragraph (50), deleted “blood measuring devices, other monitoring equipment, or insulin delivery systems used exclusively by diabetics and sales of insulin” following “Sales of”; substituted the present provisions of paragraph (52) for “Reserved”; in paragraph (54), inserted “that is sold or used pursuant to a prescription” and substituted “that is sold or used pursuant to a prescription” for “prescribed by a physician”; in subparagraph (57)(A), inserted “to an individual consumer for off-premises human consumption” and deleted “subparagraph (B) of” following “provided in”; in subparagraph (57)(B), inserted “the term”, inserted “as defined in Code Section 48-8-2”, and substituted “drugs, or over-the-counter drugs” for “alcoholic beverages, or tobacco as defined in Code Section 48-8-2”; added subparagraph (57)(C); and redesignated former subparagraphs (57)(C) and (57)(D) as present subparagraphs (57)(D) and (57)(E), respectively. The second 2011 amendment, effective July 1, 2011, redesignated former subparagraph (33.1)(B) as present division (33.1)(B)(i) and, in division (33.1)(B)(i), substituted the present provisions for the former provisions, which read: “The sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt from the first 1.80 percent of the 4 percent state sales and use tax imposed by this chapter and shall be subject to the remaining 2.20 percent of the 4 percent state sales and use tax imposed by this chapter.”; and added divisions (33.1)(B)(ii) and (33.1)(B)(iii); in subparagraph (33.1)(C), substituted “shall be exempt at all times” for “shall also be exempt”; inserted “and paragraph (2) of subsection (d) of Code Section 48-8-241” in subparagraphs (33.1)(E) and (33.1)(F); in subparagraph (33.1)(E), inserted a colon following “person which”, substituted “(i) Is” for “is”, added “; and” at the end, and added division (33.1)(E)(ii); and deleted former subparagraph (33.1)(H), which read: “The exemption provided for in this paragraph shall apply only as to transactions occurring on or after July 1, 2009, and prior to July 1, 2011.”. The third 2011 amendment, effective July 1, 2011, substituted “June 30, 2013” for “June 30, 2011” in paragraph (86).

The 2012 amendments. — The first 2012 amendment, effective April 19, 2012, substituted the present provisions of subparagraph (75)(A) for the former provisions, which read: “The sale of any covered item. The exemption provided by this paragraph shall apply only to sales occurring during a period commencing at 12:01 A.M. on July 30, 2009, and concluding at 12:00 Midnight on August 2, 2009.”; substituted “of \$1,000.00” for “\$1,500.00” in the first sentence of division (75)(B)(ii); and substituted the present provisions of subparagraph (82)(A) for the former provisions, which read: “Purchase of energy efficient products or water efficient products with a sales price of \$1,500.00 or less per product purchased for noncommercial home or personal use. The exemption provided by this paragraph shall apply only to sales occurring during a period commencing at 12:01 A.M. on October 1, 2009, and concluding at 12:00 Midnight on October 4, 2009.”; effective July 1, 2012, added the last sentence in division (33.1)(B)(i); in division (33.1)(B)(ii), in the first sentence, deleted “and ending June 30, 2013,” following “July 1, 2012,” near the beginning, inserted “1 percent of the 4 percent” near the middle, and deleted “until the aggregate state sales and use tax liability of the taxpayer during such period with respect to jet fuel exceeds \$10 million, computed as if the exemption provided in this division was not in effect during such period” following “state sales and use tax” at the end, and deleted the former second sentence, which read: “Thereafter during such period, the sale or use of jet fuel to or by the qualifying airline shall be subject to state sales and use tax.”; deleted division (33.1)(B)(iii), which read: “The exemptions provided in divisions (i) and (ii) of this subparagraph shall not apply to any purchases of jet fuel occurring on or after July 1, 2013.”; added the second sentence in subparagraph (33.1)(C); substituted “any time” for “anytime” near the middle of subparagraph (33.1)(D); in subparagraph (33.1)(E), substituted “division (ii) of subparagraph (B) of this paragraph” for “this paragraph” near the beginning, substituted “which is authorized” for “which: (i) Is authorized” near the middle, and substituted a period

for “; and” at the end; deleted division (33.1)(E)(ii), which read: “For the 12 month period immediately preceding the applicable period specified in division (i) or (ii) of subparagraph (B) of this paragraph had, or would have had in the absence of any exemption during such 12 month period, state sales and use tax liability on jet fuel of more than \$15 million.”; substituted the present provisions of subparagraph (33.1)(F) for the former provisions, which read: “For purposes of this paragraph and paragraph (2) of subsection (d) of Code Section 48-8-241, a ‘qualifying airport’ shall mean any airport in the state that has had more than 750,000 takeoffs and landings during a calendar year.”; substituted a semicolon for a period at the end of subparagraph (33.1)(G); reserved paragraph (73); deleted “or” at the end of paragraph (90); substituted “; or” for a period at the end of paragraph (91); and added paragraph (92) (now (93)); effective March 1, 2013, substituted a semicolon for “; or” at the end of paragraph (90); substituted “; or” for a period at the end of paragraph (91); added paragraph (92) (now (95)); and effective January 1, 2013, reserved paragraphs (25) through (29.1), (34), (34.3), (35), (37), (49), (64), (77), (79), and (90). The second 2012 amendment, effective July 1, 2012, in division (5)(B)(ii), substituted “Department of Public Safety” for “Public Service Commission” three times and deleted “common” following “or a motor” near the beginning. The third 2012 amendment, effective May 1, 2012, inserted “the sale or use of insulin regardless of whether the insulin is dispensable only by prescription,” in division (47)(A)(i); deleted “or” at the end of paragraph (90); substituted “; or” for a period at the end of paragraph (91); and added paragraph (92). The fourth 2012 amendment, effective May 2, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (33.1)(G), and designated paragraph (58) as reserved. The fifth 2012 amendment, effective July 1, 2012, added the last sentence to subparagraph (33.1)(C), and added paragraph (92). See the Code Commission notes regarding the effect of these amendments.

The 2013 amendments. — The first 2013 amendment, effective March 5, 2013,

substituted the present provisions of paragraph (95) for the former provisions, which read: “The sale or purchase of any motor vehicle titled in this state on or after March 1, 2013, pursuant to Code Section 48-5C-1. This exemption shall not apply to leases or rentals of motor vehicles or to those sales and use taxes collected pursuant to subsection (d) of Code Section 48-8-241.” The second 2013 amendment, effective April 10, 2013, substituted “Chapter 27 of Title 50” for “Chapter 17 of this title” in paragraph (43). The third 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation and language throughout this Code section and reserved the designation of paragraph (85). The fourth 2013 amendment, effective July 1, 2013, substituted “June 30, 2015” for “June 30, 2013” in paragraph (86). The fifth 2013 amendment, effective April 29, 2013, in paragraph (87), substituted “July 1, 2013, until June 30, 2015” for “July 1, 2009, until June 30, 2011” in subparagraph (87)(A); deleted “is” at the end of subparagraph (87)(B); substituted “Is open to the public, exhibits” for “Open to the public, that exhibits” in division (87)(B)(i); and substituted “Is located” for “Located” in division (87)(B)(ii).

Code Commission notes. — Ga. L. 1986, p. 1453, § 1; Ga. L. 1986, p. 1459, § 1; Ga. L. 1986, p. 1467, §§ 1, 2; and Ga. L. 1986, p. 1584, § 1; each of which became effective July 1, 1986, each deleted “or” at the end of paragraph (47), substituted a semicolon for a period and added “or” at the end of paragraph (48), and added differing language designated paragraph (49). Pursuant to Code Section 28-9-5, in 1986, “or” was deleted at the end of paragraph (47); a semicolon was substituted for a period at the end of paragraph (48); the paragraphs added by the four Acts listed above were designated as paragraphs (49)-(52), respectively; semicolons were substituted for periods at the end of paragraphs (49)-(51); and “or” was added at the end of paragraph (51). A fifth 1986 Act (Ga. L. 1986, p. 1464, § 2) also enacted a new paragraph (49) different from those enacted by the other 1986 Acts. However, due to its delayed effective date (October 1, 1987), the paragraph (49)

added by Ga. L. 1986, p. 1464, § 2 was not incorporated in this Code section. In 1987, however, the “or” added following paragraph (51) was deleted, a semicolon and “or” was substituted for the period following paragraph (52), and the paragraph (49) added by Ga. L. 1986, p. 1464, § 2 was redesignated as paragraph (53).

Pursuant to Code Section 28-9-5, in 1992, “Chapter 17” was substituted for “Chapter 16” in paragraph (43); “or” was deleted at the end of paragraph (53); and “; or” was substituted for the period at the end of paragraph (54); and the paragraph (54) added by Ga. L. 1992, p. 3173, § 1, was redesignated as paragraph (55), since Ga. L. 1992, p. 1276, § 2, also added a paragraph (54).

Pursuant to Code Section 28-9-5, in 1994, the paragraph (39) added by Ga. L. 1994, p. 132, § 1 was redesignated as paragraph (39.1).

Pursuant to Code Section 28-9-5, in 1996, the paragraph (58) enacted by Ga. L. 1996, p. 1643, was redesignated as paragraph (59) and related stylistic changes were made.

Pursuant to Code Section 28-9-5, in 2000, “or” was deleted at the end of paragraph (63) and a semicolon was substituted for a period at the end of paragraph (64).

Pursuant to Code Section 28-9-5, in 2000, paragraph (64), as enacted by Ga. L. 2000, p. 415, § 1, was redesignated as paragraph (65), a semicolon was substituted for a period at the end of subparagraph (65)(B), and “or” was deleted at the end of paragraph (63).

Pursuant to Code Section 28-9-5, in 2000, paragraphs (64) and (65), as enacted by Ga. L. 2000, p. 485, § 1, were redesignated as paragraphs (66) and (67); “or” was deleted at the end of newly redesignated paragraph (66), and a semicolon was substituted for a period at the end of newly redesignated paragraph (67).

Pursuant to Code Section 28-9-5, in 2000, paragraphs (64) and (65), as enacted by Ga. L. 2000, p. 615, § 1, were redesignated as paragraphs (68) and (69); “or” was deleted at the end of newly redesignated paragraph (68), and a semicolon was substituted for a period at the end of newly redesignated paragraph (69).

Pursuant to Code Section 28-9-5, in 2000, paragraphs (64), (65), and (66) as enacted by Ga. L. 2000, p. 1202, § 2, were redesignated as paragraphs (70), (71), and (72), respectively.

Ga. L. 2002, p. 575, § 1 and Ga. L. 2002, p. 855, § 1 both added a paragraph (6.2). Pursuant to Code Section 28-9-5, in 2002, the paragraph (6.2) added by Ga. L. 2002, p. 855, § 1 was redesignated as paragraph (6.3).

Pursuant to Code Section 28-9-5, in 2002, in division (68)(C)(i), “mainframe driven” was substituted for “mainframe-driven” and “high-speed” was substituted for “high speed”; and “or” was deleted following the semicolon at the end of paragraph (73).

Pursuant to Code Section 28-9-5, in 2003, paragraph (76), as added by Ga. L. 2003, p. 337, § 1, was redesignated as paragraph (77), “or” was deleted at the end of paragraph (75), and “; or” was substituted for a period at the end of paragraph (76).

Pursuant to Code Section 28-9-5, in 2004, paragraph (78) as added by Ga. L. 2004, p. 403, § 1 was redesignated as paragraph (79); paragraph (78) as added by Ga. L. 2004, p. 1073, § 1 was redesignated as paragraph (80); “or” was deleted at the end of paragraph (77); and “; or” was substituted for a period at the end of paragraph (79).

Pursuant to Code Section 28-9-5, in 2005, in subparagraphs (59)(B) and (59)(C), “fund-raising” was substituted for “fundraising”, “or” was deleted at the end of paragraph (80), “; or” was substituted for the period at the end of paragraph (81), and paragraph (81), as enacted by Ga. L. 2005, p. 794, § 1, was redesignated as paragraph (82).

Pursuant to Code Section 28-9-5, in 2006, “flourescent” was changed to “fluorescent” in subparagraph (82)(B).

Pursuant to Code Section 28-9-5, in 2006, paragraph (83), as enacted by Ga. L. 2006, p. 527, § 1, was redesignated as paragraph (84).

Pursuant to Code Section 28-9-5, in 2006, paragraph (83), as enacted by Ga. L. 2006, p. 538, § 1, was redesignated as paragraph (85).

Pursuant to Code Section 28-9-5, in

2006, “or” was deleted from the end of paragraph (82), a semicolon was substituted for a period at the end of paragraph (83), and “; or” was added at the end of paragraph (84).

Pursuant to Code Section 28-9-5, in 2006, “July 1, 2006” was substituted for “the effective date of this paragraph” in subparagraph (84)(B).

Pursuant to Code Section 28-9-5, in 2007, paragraph (33.2), as enacted by Ga. L. 2007, p. 709, § 1, was redesignated as paragraph (33.1).

Pursuant to Code Section 28-9-5, in 2007, a semicolon was substituted for a period at the end of paragraph (34.4).

Pursuant to Code Section 28-9-5, in 2008, in paragraph (7.05)(A), a comma was deleted following “pursuant to” and in divisions (70.1)(C)(i) and (85)(C)(i), “or” was inserted preceding “by or” near the end.

Pursuant to Code Section 28-9-5, in 2009, paragraph (87), as enacted by Ga. L. 2009, p. 794, § 1, was redesignated as paragraph (88); paragraph (87), as enacted by Ga. L. 2009, p. 795, § 1, was redesignated as paragraph (89); and related stylistic changes were made.

Pursuant to Code Section 28-9-5, in 2010, “May 5, 2004” was substituted for “the effective date of this paragraph” in paragraph (78), “May 17, 2004” was substituted for “the effective date of this paragraph” in subparagraph (80)(A), and “May 17, 2004,” was substituted for “the effective date of this paragraph” in subparagraph (80)(B).

Pursuant to Code Section 28-9-3, in 2012, the amendment of subparagraph (33.1)(C) of this Code section by Ga. L. 2012, p. 257, § 5-6/HB 386, was treated as impliedly repealed and superseded by Ga. L. 2012, p. 1348, § 2/HB 743, due to irreconcilable conflict. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

Pursuant to Code Section 28-9-5, in 2012, “Code Section 48-5C-1” was substituted for “Code Section 48-5B-1” in paragraph (95).

Pursuant to Code Section 28-9-5, in 2012, punctuation changes were made at the end of paragraphs (91) through (93), “; or” was substituted for a period at the end

of paragraph (94), and a period was substituted for a semicolon at the end of paragraph (95).

Pursuant to Code Section 28-9-5, in 2012, paragraph (92), as enacted by Ga. L. 2012, p. 257, § 5-5/HB 386, was redesignated as paragraph (93); paragraph (92), as enacted by Ga. L. 2012, p. 1348, § 2/HB 743, was redesignated as paragraph (94); and paragraph (92), as enacted by Ga. L. 2012, p. 257, § 1-5/HB 386, was redesignated as paragraph (95).

Editor’s notes. — Ga. L. 1986, p. 1464, § 1, not codified by the General Assembly, provides that: “It is the intention of the General Assembly by the passage of this Act to comply fully with federal law which conditions state participation in the food stamp program and WIC program on the provision of an exemption from state and local taxes for purchases made with food stamps or WIC coupons.”

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that that Act applies to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1992, p. 1276, § 2, not codified by the General Assembly, provides, in part: “This Act shall not be construed to authorize the refund of any sales and use tax paid with respect to the sale or use of durable medical equipment and prosthetic devices prior to January 1, 1993.”

Ga. L. 1992, p. 1521, § 4, not codified by the General Assembly, provides: “This Act [which amended this Code section] shall stand repealed in its entirety on January

1, 1996, and shall be void and of no effect and the provisions affected by this Act shall be specifically revived as such provisions stood before the enactment of this Act, as amended by laws other than this Act.”

Ga. L. 1994, p. 834, § 4, not codified by the General Assembly, repeals Ga. L. 1992, p. 1521, § 4, which had provided for the repeal of this Code section as affected by that 1992 Act.

Ga. L. 1994, p. 928, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Business Expansion Support Act of 1994.’”

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2003.’”

Ga. L. 2008, p. 1160, § 2(b)/HB 237, not codified by the General Assembly, provides: “Tax, penalty, and interest liabilities and refund eligibility under paragraph (34.3) of Code Section 48-8-3 of the Official Code of Georgia Annotated, as amended by Section 1 of this Act, for any period prior to January 1, 2009, shall not be affected by the passage of this Act and shall continue to be governed by the provisions of said paragraph as it existed immediately prior to January 1, 2009.”

Former paragraph (85) was repealed on its own terms effective July 1, 2010.

Former paragraph (58) was repealed on its own terms effective January 1, 2011, and was reserved by Ga. L. 2012, p. 775, § 48/HB 942.

Ga. L. 2011, p. 302, § 3/HB 234, not codified by the General Assembly, provides for severability.

Ga. L. 2012, p. 257, § 7-1(b)/HB 386, approved by the Governor April 19, 2012, provided that the effective date of the amendment to this Code section is January 1, 2012. See Op. Atty. Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: “Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage

of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act.”

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: “This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act.”

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

U.S. Code. — Section 501 of the Internal Revenue Code, referred to in subparagraph (11)(A) of this Code section, is codified at 26 U.S.C. § 501.

Law reviews. — For article discussing tax exemptions and deductions as incentives for establishment of foreign business in Georgia, see 27 *Mercer L. Rev.* 629 (1976). For article surveying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 *Mercer L. Rev.* 75 (1978). For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 *Mercer L. Rev.* 187 (1981). For survey article on recent developments in Georgia state and local taxation, see 34 *Mercer L. Rev.* 400 (1982). For annual survey of state and local taxation, see 38 *Mercer L. Rev.* 337 (1986). For article, “Common State Tax Pitfalls in the Acquisition or Disposition of Businesses in Georgia,” see 22 *Ga. St. B.J.* 82 (1985). For article, “Georgia Sales and Use Tax Exemptions for Manufacturers,” see 29 *Ga. St. B.J.* 19 (1992). For survey article on local government law, see 59 *Mercer L. Rev.* 285 (2007). For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 *Ga. St. U.L. Rev.* 217 (2011). For article, “The Chevron Two-Step in Georgia’s Administrative Law,” see 46 *Ga. L. Rev.* 871 (2012). For

article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 112 (2012).

For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 190 (1992). For note on the 1994 amendment

of this Code section, see 11 Ga. St. U.L. Rev. 249 (1994). For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 294 (2001). For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

JUDICIAL DECISIONS

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General Consideration

Scrivener's error in paragraph (42).

— Since there is no specific indication that the legislature intended to change the preexisting law when the legislature adopted the Official Code, the court views alterations of the Code Revision Commission in redrafting the statute and in substituting the words “common ownership of the property” for “persons under 100% common ownership,” as merely a scrivener's error, and the court applies the substantive law in effect at the time of enactment of the 1982 Code. *Charter Medical Info. Servs., Inc. v. Collins*, 266 Ga. 720, 470 S.E.2d 655 (1996).

Intent to exempt must be clear and distinct. — Exemption will not be held to be conferred unless the terms under which the exemption is granted clearly and distinctly show that such was the intention of the General Assembly. *Oxford v. J.D. Jewell, Inc.*, 215 Ga. 616, 112 S.E.2d 601 (1960).

Exemptions from taxation must be strictly construed. *Oxford v. J.D. Jewell, Inc.*, 215 Ga. 616, 112 S.E.2d 601 (1960); *In re Ga. Air, Inc.*, 345 F. Supp. 636 (N.D. Ga. 1972).

Fixtures which pass by conveyance of realty are exempt. — All fixtures

which would pass by a conveyance of an interest in realty as a part thereof, in the absence of provisions in the sales contract to the contrary, are exempt from the tax imposed by Ga. L. 1951, p. 360. *State v. Dyson*, 89 Ga. App. 791, 81 S.E.2d 217 (1954).

Provision on religious book unconstitutional. — O.C.G.A. § 48-8-3(15)(A) and (16), which exempt from sales tax certain religious books and papers, are unconstitutional as violative of the free speech and establishment clauses of the First Amendment when the exemptions are based on content and there is no showing of a compelling interest or that the exemptions are narrowly tailored; thus, the state revenue commissioner was enjoined from enforcing those provisions. *Budlong v. Graham*, 414 F. Supp. 2d 1222 (N.D. Ga. 2006).

On a challenge by plaintiffs, a former librarian and a book retailer, O.C.G.A. § 48-8-3(15)(A), which exempted sales and use taxes on certain religious papers, was held unconstitutional under the First Amendment's free press clause because the statute drew a line between religious and non-religious papers, thus requiring official scrutiny of content as a basis for imposing a tax, and a permanent injunc-

General Consideration (Cont'd)

tion enjoining the defendant state revenue commissioner from continuing to enforce the provision was issued; under O.C.G.A. § 48-8-3(15)(A), a calendar published by a religious institution would presumably not qualify as a "religious paper" and the statute thus discriminated between religious and non-religious writings and, furthermore under O.C.G.A. § 48-8-3(16), books with critiques of the Bible might or might not be exempted, depending on whether the state found the materials were "commonly recognized" as "Holy Scripture". *Budlong v. Graham*, 488 F. Supp. 2d 1252 (N.D. Ga. 2007).

Cited in *Strickland v. W.E. Ross & Sons*, 251 Ga. 324, 304 S.E.2d 719 (1983).

Sales to State or Federal Government

General Assembly did not intend to exempt any body politic other than those specifically described in this section. *Oxford v. Housing Auth.*, 104 Ga. App. 797, 123 S.E.2d 175 (1961).

General Assembly intended to exempt foreign municipal corporations doing business and serving residents of this state from sales and use taxes on purchases of tangible personal property which the foreign municipality uses in conducting the corporation's business within the state. *City of Chattanooga v. State*, 246 Ga. 99, 269 S.E.2d 5 (1980).

When foreign municipality treated as municipality of this state. — Foreign municipality permitted to enter this state and carry on proprietary function by providing services to residents of this state is a municipality of this state for purposes of this exemption. *City of Chattanooga v. State*, 246 Ga. 99, 269 S.E.2d 5 (1980).

Housing authorities are taxable. — Ga. L. 1951, p. 360 is an all inclusive statute which includes a housing authority as a taxpayer since no provision appears to exclude a housing authority. *Oxford v. Housing Auth.*, 104 Ga. App. 797, 123 S.E.2d 175 (1961).

Sales to a water authority are taxable. *Blackmon v. Cobb County-Marietta*

Water Auth., 126 Ga. App. 459, 191 S.E.2d 128 (1972).

Property Furnished for Work on Water, Gas, or Sewage System

Exemption applies to subcontractors. — Exemption applies not only to use of county pipe by a prime contractor with the county, but also use by a subcontractor performing an included portion of the work. *Blackmon v. DeKalb Pipeline Co.*, 127 Ga. App. 395, 193 S.E.2d 635 (1972).

Considerations as to whether installed to serve particular property site. — Water mains are not installed to serve a particular property site under this exemption when the water mains are the property of the county prior to and after installation; are installed upon property over which the county gains a permanent easement; when, once operational, the water mains serve new residential customers; when the water mains are installed in such a way as readily to permit extensions to adjoining areas as the need arises; when, as the county is developed, the water mains are extended and become an additional network of the county water system; and when, once installed, the water mains are part of the general water system of the county used for general distribution purposes. *Blackmon v. DeKalb Pipeline Co.*, 127 Ga. App. 395, 193 S.E.2d 635 (1972).

Federal Excise Tax

Section does not apply to excise taxes included in sales price and gross price. — This section is construed in harmony with other provisions of Ga. L. 1951, p. 360, so that federal excise taxes as used in this section refer only to those federal excise taxes which are not included in sale price and gross sales. *Undercoffer v. Capital Auto. Co.*, 111 Ga. App. 709, 143 S.E.2d 206 (1965) (see O.C.G.A. § 48-8-3).

Tax Injunction Act. — Tax Injunction Act, 28 U.S.C. § 1341, did not bar jurisdiction for a court to consider a challenge to O.C.G.A. § 48-8-3 and the statute's exemption from sales tax of certain religious books and papers because the plaintiffs did not seek to rewrite Georgia law

but only asked the court to restrain further application of the exemption, which would actually enrich the state's coffers rather than deplete those coffers. *Budlong v. Graham*, 414 F. Supp. 2d 1222 (N.D. Ga. 2006).

Although a preliminary injunction was properly entered in a challenge to exemptions of religious items from sales tax of O.C.G.A. § 48-8-3(15)(A), and (16) without a hearing because the state tax official was not denied an opportunity to present contentions, it was error to consolidate the matter with final disposition without a hearing under Fed. R. Civ. P. 65(a)(2) without consent of the official; thus, a motion to reconsider was appropriate to set aside the consolidation pursuant to N.D. Ga. R. 7.2(E). *Budlong v. Graham*, 488 F. Supp. 2d 1245 (N.D. Ga. 2006).

Transportation Charges

Purpose of exemption for transportation charges. — Purpose of Ga. L. 1953, Jan.-Feb. Sess., p. 182, § 1 is merely to exclude the sale of such services from the sales tax, not from use tax. *Colonial Pipeline Co. v. Undercoffer*, 115 Ga. App. 58, 153 S.E.2d 592 (1967).

Inconsequential Sales Incident to Service Transactions

When skilled service is the object of transaction, property incidentally furnished is exempt. — When the furnishing of tangible personal property constitutes part of a personal service transaction in which skilled service in the preparation thereof is more the object of the transaction than inconsequential items of tangible personal property for which no separate charges are made, such items are exempt from sales tax. *Hawes v. Dimension, Inc.*, 122 Ga. App. 190, 176 S.E.2d 602 (1970).

Purchase to be transferred to another in providing a service is a taxable retail transaction, even though the actual consumption of the item is made by the recipient of the service or by the recipient's customer. *Craig-Tourial Leather Co. v. Reynolds*, 87 Ga. App. 360, 73 S.E.2d 749 (1952); *L.M. Berry & Co. v. Blackmon*, 129 Ga. App. 347, 199 S.E.2d 610 (1973),

aff'd, 231 Ga. 659, 203 S.E.2d 520 (1974).

Subject to sales tax where purchased in state. — Purchase of property to be used in providing a service is a retail purchase, and if made within the state it is a taxable purchase subject to the sales tax on retail sales within the state. *L.M. Berry & Co. v. Blackmon*, 231 Ga. 659, 203 S.E.2d 520 (1974).

Subject to use tax where purchased outside state. — Purchase of tangible personal property in another state to be transferred to one in this state in the course of providing a service under a contract executed and performed in this state is subject to use tax, even though the transfer incident to the service transaction is exempt under Ga. L. 1951, p. 360. *L.M. Berry & Co. v. Blackmon*, 231 Ga. 659, 203 S.E.2d 520 (1974).

Actual cost or monetary value of materials used is not determinative. — In determining whether sale of materials used is an inconsequential element of the service transaction, or whether the service rendered is part of the sale, the actual cost or monetary value of materials used is not determinative. *Craig-Tourial Leather Co. v. Reynolds*, 87 Ga. App. 360, 73 S.E.2d 749 (1952).

Shoe repairs may reasonably be said to fall within the category of personal service transactions. *Craig-Tourial Leather Co. v. Reynolds*, 87 Ga. App. 360, 73 S.E.2d 749 (1952).

Sale of steel dies to a manufacturer is not a personal service transaction when such dies are used by the manufacturer until disposed of. *Mead Corp. v. Strickland*, 247 Ga. 495, 276 S.E.2d 586 (1981).

Agricultural Machinery

Intent as to exemption of portable multipurpose drying barns. — This section reveals no distinct and clear intention on the part of the General Assembly to exempt from taxation portable multipurpose drying barns used for the storage of crops. *Chilivis v. Dixon*, 234 Ga. 703, 217 S.E.2d 283 (1975).

Portable crop drying units (tobacco barns) are not farm equipment exclusively used in harvesting crops and are, therefore, not exempt from sales tax. *Nimmer v.*

Agricultural Machinery (Cont'd)

Strickland, 242 Ga. 430, 249 S.E.2d 233 (1978).

Aircraft, etc., Used by Common Carriers in Interstate Commerce

Determination as to whether carrier is private or common. — If there is a question as to whether a carrier is a private or common carrier, it is to be determined by facts relating to whether the business is public business or employment, and whether the service is to be rendered to all indifferently, and whether one has held oneself out as so engaged, so as to make the carrier liable for a refusal to accept the employment offered. In re Ga. Air, Inc., 345 F. Supp. 636 (N.D. Ga. 1972).

Status as a common carrier is a factual question and cannot be forced on one by legislative fiat. In re Ga. Air, Inc., 345 F. Supp. 636 (N.D. Ga. 1972).

Machinery Directly Used in Manufacturing

Term “machinery” in O.C.G.A. § 48-8-3 is more expansive than the term “machine,” in that the term “machinery” embraces both those parts of a machine which do generate or distribute power, as well as those parts of a machine which do not generate or distribute power. *Amoena Corp. v. Strickland*, 248 Ga. 496, 283 S.E.2d 894 (1981).

Molds are not machines in themselves, but are part of tax-exempt machinery under O.C.G.A. § 48-8-3, used in manufacturing prosthetic devices. *Amoena Corp. v. Strickland*, 248 Ga. 496, 283 S.E.2d 894 (1981).

Repair and replacement parts. — Since the 2000 version of O.C.G.A. § 48-8-3(34)(A) for the first time expressly exempted repair and replacement parts from taxation, it followed that such parts were not exempt under the 1994 version; consequently, the trial court properly granted the Department of Revenue partial summary judgment on the issue. *Inland Paperboard & Packaging, Inc. v. Ga. Dep’t of Revenue*, 274 Ga. App. 101, 616 S.E.2d 873 (2005).

The 1997 version of O.C.G.A. § 48-8-3(34)(A) does not exempt machinery repair parts from sales tax but at best the language might have created some ambiguity that “replacement components” could include repair parts, but an exemption had to be expressed unambiguously; furthermore, in 2000, the legislature made it clear that the 1997 statute did not extend the exemption to machinery repair parts. *Ga. Dep’t of Revenue v. Owens Corning*, 283 Ga. 489, 660 S.E.2d 719 (2008).

This section is intended to create tax advantages for machinery purchased for new or expanded industry. *Hawes v. Institutional Packers of Am., Inc.*, 117 Ga. App. 243, 160 S.E.2d 459 (1968).

Exemption construed in taxing authority’s favor. — Application of this exemption has been narrowly restricted in accordance with the general proposition that in interpreting tax exemptions all doubts must be resolved in favor of the taxing authority. *Southwire Co. v. Chilivis*, 139 Ga. App. 329, 228 S.E.2d 295 (1976).

Direct use is measured by actual use, not essentialness to operation. — Test of whether equipment is used directly within the meaning of this exemption is not whether the property is essential to the operation of the plant, but whether it is an actual part of the process of manufacture. *Blackmon v. Screven County Indus. Dev. Auth.*, 131 Ga. App. 265, 205 S.E.2d 497 (1974).

Absence of intervening agency, not whether machinery actually touches or affects product. — Test as to direct use is not whether the substance generated by the machinery in question touched or directly affected the product. Rather, one test for direct use in manufacture is the absence of such an intervening agency. *Blackmon v. Screven County Indus. Dev. Auth.*, 131 Ga. App. 265, 205 S.E.2d 497 (1974).

One test for direct use in manufacture is the absence of an intervening agency. *Southwire Co. v. Chilivis*, 139 Ga. App. 329, 228 S.E.2d 295 (1976).

Devices used to affect the environment of goods in manufacture are not

used directly in manufacturing. *Southwire Co. v. Chilivis*, 139 Ga. App. 329, 228 S.E.2d 295 (1976).

Definition of “manufacturing process.” — For this section, the manufacturing process has been defined by the commissioner consisting of a series of separate operations at a fixed location whereby, through the application of machines and labor to raw material or materials at any stage of becoming finished, tangible, personal property, the form or composition of the material or materials is significantly changed. *Chilivis v. Marble Prods. Co.*, 135 Ga. App. 187, 217 S.E.2d 441 (1975).

What constitutes direct use. — When the machinery does not directly effect the chemical change in the raw material, but rather, the electrical current creates an electron imbalance within the electrolytic cell, which causes a chemical and physical change in the raw material, and the machinery simply modifies and transmits this electrical current, the equipment is not used directly in the manufacture of tangible personal property. *Southwire Co. v. Chilivis*, 139 Ga. App. 329, 228 S.E.2d 295 (1976).

Industrial Materials, Packaging, etc.

Intent. — Intention of the General Assembly is that materials merely used in processing should not be excluded from the operation of Ga. L. 1951, p. 360. *Undercoffer v. Macon Linen Serv., Inc.*, 114 Ga. App. 231, 150 S.E.2d 703 (1966).

Growth of living substances can be part of an industrial process when it is but one stage in the development of the end product and when the growth itself is so artificially controlled as to be unnatural. *Blackmon v. J.D. Jewell, Inc.*, 126 Ga. App. 679, 191 S.E.2d 621 (1972).

Lithographic plates used by printing company are not exempt. *Chilivis v. Stein*, 141 Ga. App. 536, 233 S.E.2d 881 (1977).

Sale of scrap copper is exempt, but sale of the new product to the customer is taxable as a sale of tangible personal property at retail. *Southwire Co. v. Chilivis*, 139 Ga. App. 329, 228 S.E.2d 295 (1976).

Laundering operations are in the nature of maintenance or service operations and the starch is not “impregnated into the product at any stage of its processing”. *Undercoffer v. Macon Linen Serv., Inc.*, 114 Ga. App. 231, 150 S.E.2d 703 (1966).

Industrial materials used to coat or impregnate a product at any stage of the product’s manufacture are exempt even if the materials may later be removed in another manufacturing process. *Hawes v. Bibb Mfg. Co.*, 224 Ga. 141, 160 S.E.2d 355 (1968).

What constitutes packaging for shipment or sale. — Cabinets and dispensers furnished by a linen company to the company’s customers are not containers used for packaging personal property for shipment or sale within the meaning of this section’s exemption. *Undercoffer v. Macon Linen Serv., Inc.*, 114 Ga. App. 231, 150 S.E.2d 703 (1966).

Bottles and cases for milk and soft drinks are exempt containers used for packaging tangible personal property for shipment and sale. *Undercoffer v. Buck*, 107 Ga. App. 870, 132 S.E.2d 157 (1963).

Sale of Antipollution Machinery and Equipment

Exemption applies to ultimate owner, not contractor. — Contractor purchasing waste water treatment equipment, who is not the ultimate owner of the water pollution control facility, is subject to sales tax. *Indian River Constr. Co. v. Beloit Passavant Corp.*, 241 Ga. 282, 244 S.E.2d 814 (1978).

Regulations permitting payment of tax by contractor and refund to ultimate owner. — This section is broad enough to authorize the commissioner to issue regulations requiring the contractor to remit the tax on pollution control equipment and allowing the ultimate owner to file a claim for refund since the contractor will presumably be able to pass this cost on to the ultimate owner. *Eimco BSP Servs. Co. v. Chilivis*, 241 Ga. 263, 244 S.E.2d 829 (1978).

Pollutant Waste Used in Recycling or Burning Process

Legislative intent. — This exemption is intended for industrial raw materials

Pollutant Waste Used in Recycling or Burning Process (Cont'd)

used in the process of manufacturing tangible personal property for sale, which previously became wasteful by-products, but which now, with the advent of stricter pollution control standards, are being recycled or burned and used as a source of energy. *Eimco BSP Servs. Co. v. Chilivis*, 241 Ga. 263, 244 S.E.2d 829 (1978).

Drugs Dispensed by Prescription and Prescription Eyeglasses and Contact Lenses

Contact lenses must be pursuant to prescription. — O.C.G.A. § 48-8-3(47) applies only to transactions involving a sale of contact lenses pursuant to a prescription. *CIBA Vision Corp. v. Jackson*, 248 Ga. App. 688, 548 S.E.2d 431 (2001).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

GENERAL CONSIDERATION

SALES TO STATE OR FEDERAL GOVERNMENT

FEDERAL EXCISE TAX

SALES TO NONPROFIT HOSPITALS, NURSING HOMES, ETC.

SALES TO UNIVERSITY SYSTEM OF GEORGIA

SALES TO PRIVATE COLLEGES OR UNIVERSITIES

SALES TO PRIVATE ELEMENTARY AND SECONDARY SCHOOLS

SALES BY RELIGIOUS INSTITUTIONS OR DENOMINATIONS

SALE OF FUEL AND SUPPLIES USED BY SHIPS

SALES OF TRANSPORTATION EQUIPMENT

TRANSPORTATION CHARGES

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SALE OF SEED, FERTILIZER, ANIMAL FEED, ETC.

INDUSTRIAL MATERIALS, PACKAGING, ETC.

SALE OF ANTIPOLLUTION MACHINERY AND EQUIPMENT

General Consideration

Sale of natural gas by a municipality is not exempt from the sales tax. 1950-51 Op. Att'y Gen. p. 407.

Agricultural commodity commissions are subject to taxes imposed under Ga. L. 1951, p. 360. 1975 Op. Att'y Gen. No. 75-136.

Sale of electricity to subscribers by a rural electric membership corporation is subject to sales tax at the rate of 3 percent of the total charges billed to such subscribers for electric service, regardless of whether the corporation utilizes 20 percent of such revenues to amortize federal loans or otherwise. 1967 Op. Att'y Gen. No. 67-377.

Middle Georgia Coliseum Authority is subject to Ga. L. 1951, p. 360 unless exempted by some provision of law. 1965-66 Op. Att'y Gen. No. 65-46.

Sales to State or Federal Government

Purpose of exemption. — Basic purpose of the exemption in this section is to relieve public institutions from the imposition and payment of the sales and use taxes and to exempt sales when the sale is to or the use is by a public instrumentality, i.e., an instrumentality of the state, city, or county. 1954-56 Op. Att'y Gen. p. 867.

Nonprofit corporation which does not receive any governmental appropriation is not exempt from taxation. 1971 Op. Att'y Gen. No. U71-112.

Sale made directly to department of this state is immune, and it may not pay erroneously imposed sales tax. 1970 Op. Att'y Gen. No. 70-28.

Sales to a contractor for use in performing a contract with the United

States are not exempt, though sales to the United States are. 1960-61 Op. Att'y Gen. p. 553.

Subcontractor doing work for state owes sales tax. — Independent contractor who receives a subcontract from one who is doing work for the state must pay sales taxes on materials purchased. 1954-56 Op. Att'y Gen. p. 841.

Departments of state liable for taxes imposed by other jurisdictions. — Sales occurring in other states are subject to foreign statutes, which may or may not exempt sales made to a sister state. Absent such exemption, departments of this state are liable for payment of sales taxes imposed by other states. 1970 Op. Att'y Gen. No. 70-28.

What entities within exemption. — Federal credit unions are not subject, as consumers, to sales and use taxes. 1954-56 Op. Att'y Gen. p. 848.

Incorporated athletic associations, that are managed by public high school authorities, that are instrumentalities of the school board, and that derive at least some of their financial support from public funds, are exempt from payment of sales tax. 1954-56 Op. Att'y Gen. p. 867.

Purchases made by schools of supplies for their own use are not subject to sales tax. 1954-56 Op. Att'y Gen. p. 868.

Southern Governors' Conference is a cooperative agency of the chief executives of the southern states, and purchases by its various agencies are equivalent to purchases by the Executive Department of this state, and are exempt from sales and use tax. 1960-61 Op. Att'y Gen. p. 547.

Officer and noncommissioned officer clubs are instrumentalities of the United States and immune from state taxation. 1960-61 Op. Att'y Gen. p. 550.

Purchases by Southern Interstate Nuclear Board are equivalent to purchases by state and are exempt from sales and use taxes. 1962 Op. Att'y Gen. p. 555.

Purchases by the nonappropriated Athletic Fund of the Board of Corrections are not subject to sales tax. 1960-61 Op. Att'y Gen. p. 551 (decided under Ga. L. 1951, p. 360).

Sales to the University Hospital, Augusta, Georgia, are exempt. 1954-56 Op. Att'y Gen. p. 850.

American National Red Cross is not liable for Georgia sales tax on its purchases because it is a federal instrumentality for purposes of immunity from state taxation. 1980 Op. Att'y Gen. No. 80-28.

Purchases by a corporation operating a golfing facility on a municipally-owned course are subject to sales tax. 1969 Op. Att'y Gen. No. 69-208.

Georgia Seed Development Commission taxable. — Since the Georgia Seed Development Commission does not operate with appropriated government funds, it is subject to taxes imposed under Ga. L. 1951, p. 360 (see O.C.G.A. Art. 1, Ch. 8, T. 48). 1971 Op. Att'y Gen. No. 71-72.

Federal Excise Tax

Federal gallonage tax on intoxicating liquors is an excise tax. Therefore, it is excluded in computation of gross sales for sales tax purposes, provided that it is billed to the consumer separately from the selling price. 1954-56 Op. Att'y Gen. p. 851.

Sales to Nonprofit Hospitals, Nursing Homes, etc.

Registration with commissioner necessary for exempt status. — Nonprofit organizations are not, because of their status as such, exempt from sales and use taxes. When the organization is not registered with the commissioner as a dealer, one who sells to it must collect the tax. 1971 Op. Att'y Gen. No. U71-143.

Sales to University System of Georgia

Exemption of purchases made with donated funds. — Since the Woman's College of Georgia is an educational unit of the University System of Georgia, it can make purchases tax free from any funds which the Foundation of the Woman's College of Georgia, Inc. might donate to it. 1965-66 Op. Att'y Gen. No. 66-221.

Sales to Private Colleges or Universities

Category of sales transactions exempted. — Exemption for sales of prop-

Sales to Private Colleges or Universities (Cont'd)

erty to be used exclusively for educational purposes by certain colleges and universities does not exempt a type of property but a category of sales transactions. The sales tax is a transaction tax imposed upon retail sales of tangible personal property and not a property tax. Thus, this exemption applies only to sales transactions in which the purchaser is a private college or university within the meaning of the provision who uses the property or services exclusively for educational purposes. 1980 Op. Att'y Gen. No. 80-101.

Sales to Private Elementary and Secondary Schools

Instruction must be considered equal substitute for that received in public schools. — School which does not provide general instruction for children which could be considered an equal substitute for instruction received in public schools is not entitled to a sales tax exemption. 1968 Op. Att'y Gen. No. 68-270.

Sales by Religious Institutions or Denominations

Exemption of sales of religious papers inapplicable to purchases by publishing organization. — Ga. L. 1953, Jan.-Feb. Sess., p. 182, § 1 does not provide an exemption of purchases made by organizations publishing religious papers. Only the sale of the religious paper itself is exempted. 1952-53 Op. Att'y Gen. p. 480; 1954-56 Op. Att'y Gen. p. 866.

Sale of Fuel and Supplies Used by Ships

Exemption inapplicable to fishing ships. — This section relieves such ships as are engaged in trade between ports in this state and ports in other states of the United States or its possessions. Even assuming that fishing ships ply the high seas, such ships do not fall within the exemption provided in this section. 1954-56 Op. Att'y Gen. p. 853.

Sales of Transportation Equipment

Apparent intent behind O.C.G.A. § 48-8-3(32) was to provide for situations

when due to size or other reasons the vehicle could not reasonably be removed by means other than its own motive power. The exemption would prevent the purchaser from being deemed to have taken delivery in Georgia (so as to incur tax liability) and put the purchaser on the same basis as other nonresident purchasers taking delivery outside Georgia. 1980 Op. Att'y Gen. No. 80-164.

Ordinary meaning of the phrase "under its own power" is "under its own motive power." 1980 Op. Att'y Gen. No. 80-164.

Trailer could not qualify for exemption. 1980 Op. Att'y Gen. No. 80-164.

Transportation Charges

Exemption inapplicable to transportation services incident to a sale.

— Transportation costs are properly included in the total amount for which the property is sold as services which are part of the sale. The exemption provided for in Ga. L. 1953, Jan.-Feb. Sess., p. 182, § 1 applies solely to those charges made for transportation services by a carrier, not incident to a sale of goods by the carrier. 1970 Op. Att'y Gen. No. 70-94.

Lease or rental of vehicles not considered as rendering of transportation services. — Leasing or renting of trucks by lumber companies is subject to payment of the state sales tax, notwithstanding the fact that the goods transported are in interstate commerce, since it cannot be considered the rendering of transportation services, but is, in effect, a lease. 1952-53 Op. Att'y Gen. p. 242.

Inconsequential Sales Incident to Service Transactions

Personal service transactions which involve no sales are not within the meaning of "retail sales" or "sales at retail." 1952-53 Op. Att'y Gen. p. 236.

Control is test as to whether property deemed leased or used in rendering personal service. — When the owner of a bulldozer furnishing earth-moving services is at all times in complete control and direction of the machine, the transaction constitutes merely the rendition of personal services and is

not a leasing of the property so as to be subject to payment of the state sales tax. 1952-53 Op. Att'y Gen. p. 236.

"Color separations" purchased by department stores for use in printing various advertising materials do not fall within sales and use tax exception of O.C.G.A. § 48-8-3(22). 1981 Op. Att'y Gen. No. 81-93.

Use of bank computers by customers for consideration, when customers have complete control over operation for an allotted time, is a lease or rental of computers and is subject to Ga. L. 1951, p. 360 (see O.C.G.A. Art. 1, Ch. 8, T. 48). 1969 Op. Att'y Gen. No. 69-128.

Sale of Seed, Fertilizer, Animal Feed, etc.

What constitutes feed for livestock. — Block salt constitutes feed for livestock and is therefore exempt from payment of state sales tax. 1952-53 Op. Att'y Gen. p. 236.

Food for bees kept for production of honey is not exempt since bees are not considered livestock within the legislative intent in granting an exemption. 1962 Op. Att'y Gen. p. 553.

Dog food is feed for a pet and not for livestock, and hence is not exempt from sales tax. 1957 Op. Att'y Gen. p. 318.

What property exempt. — Portable feed mill does not fall within Ga. L. 1951, p. 360, nor any other exemption. 1954-56 Op. Att'y Gen. p. 831.

Use of seeds and fertilizer to maintain a golf course is not exempt. 1969 Op. Att'y Gen. No. 69-208.

Industrial Materials, Packaging, etc.

Test for exemption of property used in industrial processes. — In order for tangible personal property to be exempt under Ga. L. 1951, p. 360, it must meet three tests: (1) it must be industrial material; (2) it must not be machinery or machinery repair parts; and (3) it must be used directly in the fabrication, converting, or processing of articles of tangible personal property or parts thereof for resale. 1950-51 Op. Att'y Gen. p. 414.

If the functional purpose of the material is product-related either as a component

or as coating or impregnating material, even though removed prior to sale, it is exempt. Use for some other and distinct purpose is not sufficient for this exemption, even though the material is incidentally absorbed or coated upon the product. 1970 Op. Att'y Gen. No. 70-100.

What constitutes exempt industrial materials. — Filtering cloths used in manufacturing processes are not exempt from application of sales and use tax. To be entitled to an exempt status, the material must be coated upon or impregnated into the finished product. 1962 Op. Att'y Gen. p. 557.

Natural gas used in producing barium carbonate is not exempt under the sales tax. 1950-51 Op. Att'y Gen. p. 416.

Knitting needles and "jacks" are not such industrial materials as are exempt under Ga. L. 1951, p. 360. 1950-51 Op. Att'y Gen. p. 417.

Applicability of sales and use taxes to containers should be dealt with by regulations of the commissioner. 1957 Op. Att'y Gen. p. 320.

What constitutes packaging. — Milk bottles and cartons are exempt from the sales tax. 1950-51 Op. Att'y Gen. p. 410.

Advertising supplements purchased by department stores for insertion into local newspapers do not fall within the sales and use tax exception provided for certain "industrial materials" by O.C.G.A. § 48-8-3(35)(A)(i). 1981 Op. Att'y Gen. No. 81-93.

Advertising supplement does not become a component part of the newspaper for purposes of O.C.G.A. § 48-8-3(35)(A)(i); it is a finished product when completed by the printer, and the advertising's inclusion within the newspaper is only for distribution purposes. 1981 Op. Att'y Gen. No. 81-93.

Purchase of material from out-of-state printers for distribution in Georgia. — Purchase by department stores within Georgia of advertising materials from out-of-state printers, shipped by printers to designated in-state direct mailing services, and distributed by such services to the stores' customers in Georgia constitutes "use" in Georgia by the stores within the meaning of O.C.G.A. § 48-8-2(12). 1981 Op. Att'y Gen. No. 81-93.

Sale of Antipollution Machinery and Equipment

Mere certification by pollution control agency insufficient when primary purpose is not pollution control. — Board of tax assessors must exempt property used in or a part of any facility which has been certified by a pollution control agency as necessary and adequate to eliminate or reduce air or water pollution, if it finds from all the circumstances surrounding the case that the facility was installed for the primary purpose of eliminating or reducing pollution. If it finds that the facility, even

though certified, was not installed or constructed for that primary purpose, but for another purpose, such as increasing production, with only an incidental intent to control pollution, then it must find that the exemption does not apply. 1969 Op. Att'y Gen. No. 69-325.

What constitutes antipollution machinery or equipment. — Purchase of soda ash (commercial anhydrous sodium carbonate) for use in reducing or eliminating water pollution is not exempt from sales tax as soda ash is neither machinery nor equipment. 1973 Op. Att'y Gen. No. U73-18.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, §§ 86, 90, 91, 96, 99 et seq.

C.J.S. — 84 C.J.S., Taxation, §§ 252 et seq., 274.

ALR. — State tax on goods purchased by, or for the benefit of, the federal government, or on the privilege of conducting the business in connection with which the sales are made, 56 ALR 587; 140 ALR 621.

Co-operative corporations or associations formed by producers of agricultural products as within provisions of taxing statutes regarding agricultural products or producers, 100 ALR 439.

Deductibility of freight charges in determining amount of gross sales or receipts for purposes of statutes making gross sales or receipts the subject or measure of a tax, 102 ALR 768.

Exemption of charitable organization from taxation or special assessment, 108 ALR 284.

What is a municipal corporation within constitutional or statutory tax exemption provisions, 108 ALR 577.

Construction and application of terms in tax statute, "compounding," "preparing," "distilling," and the like, descriptive of the production or processing of food, drugs, or other chemical products, 108 ALR 1074.

Hospital as within tax exemption provision not specifically naming hospitals, 144 ALR 1483.

Computation of sales tax, 150 ALR 1311.

Tax exemption of property of religious, educational, or charitable body as extending to property or income thereof used in publication or sale of literature, 154 ALR 895.

Construction and application of exemption or deduction provision of general sales tax act, 157 ALR 804.

What transactions constitute a "sale" within operation of sales tax law provision defining a sale as including a transfer of possession, license to use, or words to that effect, 172 ALR 1317.

Tax exemptions and the contract clause, 173 ALR 15.

Sale or use tax as within tax exemption provisions of statutes other than those imposing such taxes, 1 ALR2d 465.

Applicability of sales tax to judicial or bankruptcy sales, 27 ALR2d 1219.

Items or materials exempt from use tax as used in manufacturing, processing, or the like, 30 ALR2d 1439.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in Constitution, 61 ALR2d 1031.

Validity of use tax exemption having no complementary exemption under sales tax, 85 ALR2d 1043.

Validity and construction of provision exempting from use tax property which is "not readily obtainable" in the state, 88 ALR2d 811.

Sales or use tax: deduction or exemption of discount or premium in computing amount of sales, 90 ALR2d 338.

What constitutes manufacturing and who is a manufacturer under tax laws, 17 ALR3d 7.

Sales and use taxes: exemption of casual, isolated, or occasional sales, 42 ALR3d 292.

Exemption of religious organization from sales or use tax, 54 ALR3d 1204.

Validity of municipal admission tax for college football games or other college sponsored public events, 60 ALR3d 1027.

Applicability of sales tax to "tips" or service charges added in lieu of tips, 73 ALR3d 1226.

What constitutes direct use within meaning of statute exempting from sales and use taxes equipment directly used in production of tangible personal property, 3 ALR4th 1129.

Eyeglasses or other optical accessories as subject to sales or use tax, 14 ALR4th 1370.

What constitutes newspapers, maga-

zines, periodicals, or the like, under sales or use tax law exemption, 25 ALR4th 750.

Architectural drawings or illustrations as exempt from sales or use tax, 27 ALR5th 794.

Sales and use tax exemption for medical supplies, 30 ALR5th 494.

Exemption of charitable or educational organization from sales or use tax, 69 ALR5th 477.

Items or materials exempt from use tax as becoming component part or ingredient of manufactured or processed article, 89 ALR5th 493.

Parts and supplies used in repair as subject to sales and use taxes, 113 ALR5th 313.

Cable television equipment or services as subject to sales or use tax, 23 ALR6th 165.

Validity, construction, and application of sales, use, and utility taxes on retail transactions of internet sellers and internet access providers, 30 ALR6th 341.

48-8-3.1. Exemptions as to motor fuels.

(a) Except as provided in subsection (b) of this Code section, sales of motor fuels as defined in paragraph (9) of Code Section 48-9-2 shall be exempt from the first 3 percent of the sales and use taxes levied or imposed by this article and shall be subject to the remaining 1 percent of the sales and use taxes levied or imposed by this article.

(b) Sales of motor fuel other than gasoline which motor fuel other than gasoline is purchased for purposes other than propelling motor vehicles on public highways as defined in Article 1 of Chapter 9 of this title shall be fully subject to the 4 percent sales and use taxes levied or imposed by this article unless otherwise specifically exempted by this article.

(c) It is specifically declared to be the intent of the General Assembly that taxation imposed on sales of motor fuel wholly or partially subject to taxation under this Code section shall not constitute motor fuel taxes for purposes of any provision of the Constitution providing for the automatic or mandatory appropriation of any amount of funds equal to funds derived from motor fuel taxes. (Code 1981, § 48-8-3.1, enacted by Ga. L. 1989, p. 62, § 4.)

48-8-3.2. Definitions; exemption; applicability; examples.

(a) As used in this Code section, the term:

(1) "Consumable supplies" means tangible personal property, other than machinery, equipment, and industrial materials, that is consumed or expended during the manufacture of tangible personal property. The term includes, but is not limited to, water treatment chemicals for use in, on, or in conjunction with machinery or equipment and items that are readily disposable. The term excludes packaging supplies and energy.

(2) "Energy" means natural or artificial gas, oil, gasoline, electricity, solid fuel, wood, waste, ice, steam, water, and other materials necessary and integral for heat, light, power, refrigeration, climate control, processing, or any other use in any phase of the manufacture of tangible personal property. The term excludes energy purchased by a manufacturer that is primarily engaged in producing electricity for resale.

(3) "Equipment" means tangible personal property, other than machinery, industrial materials, and consumable supplies. The term includes durable devices and apparatuses that are generally designed for long-term continuous or repetitive use. Examples of equipment include, but are not limited to, machinery clothing, cones, cores, pallets, hand tools, tooling, molds, dies, waxes, jigs, patterns, conveyors, safety devices, and pollution control devices. The term includes components and repair or replacement parts. The term excludes real property.

(4) "Fixtures" means tangible personal property that has been installed or attached to land or to any building thereon and that is intended to remain permanently in its place. A consideration for whether tangible property is a fixture is whether its removal would cause significant damage to such property or to the real property to which it is attached. Fixtures are classified as real property. Examples of fixtures include, but are not limited to, plumbing, lighting fixtures, slabs, and foundations.

(5) "Industrial materials" means materials for future processing, manufacture, or conversion into articles of tangible personal property for resale when the industrial materials become a component part of the finished product. The term also means materials that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion, even though such materials do not remain a component part of the finished product for sale. The term includes raw materials.

(6) "Local sales and use tax" means any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional

amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the “Metropolitan Atlanta Rapid Transit Authority Act of 1965”; and by or pursuant to any article of this chapter.

(7) “Machinery” means an assemblage of parts that transmits force, motion, and energy one to the other in a predetermined manner to accomplish a specific objective. The term includes a machine and all of its components, including, but not limited to, belts, pulleys, shafts, gauges, gaskets, valves, hoses, pipes, wires, blades, bearings, operational structures attached to the machine, including stairways and catwalks, or other devices that are required to regulate or control the machine, allow access to the machine, or enhance or alter its productivity or functionality. The term includes repair or replacement parts. The term excludes real property and consumable supplies.

(8) “Machinery clothing” means felts, screen plates, wires, or any other items used to carry, form, or dry work in process through the manufacture of tangible personal property.

(9) “Manufacture of tangible personal property,” used synonymously with the term “manufacturing,” means a manufacturing operation, series of continuous manufacturing operations, or series of integrated manufacturing operations engaged in at a manufacturing plant or among manufacturing plants to change, process, transform, or convert industrial materials by physical or chemical means into articles of tangible personal property for sale, for promotional use, or for further manufacturing that have a different form, configuration, utility, composition, or character. The term includes, but is not limited to, the storage, preparation, or treatment of industrial materials; assembly of finished units of tangible personal property to form a new unit or units of tangible personal property; movement of industrial materials and work in process from one manufacturing operation to another; temporary storage between two points in a continuous manufacturing operation; random and sample testing that occurs at a manufacturing plant; and a packaging operation that occurs at a manufacturing plant.

(10) “Manufacturer” means a person or business, or a location of a person or business, that is engaged in the manufacture of tangible personal property for sale or further manufacturing. To be considered a manufacturer, the person or business, or the location of a person or business, must be:

(A) Classified as a manufacturer under the 2007 North American Industrial Classification System Sectors 21, 31, 32, or 33, or North American Industrial Classification System industry code 22111 or specific code 511110; or

(B) Generally regarded as being a manufacturer.

Businesses that are primarily engaged in providing personal or professional services or in the operation of retail outlets, generally including, but not limited to, grocery stores, pharmacies, bakeries, or restaurants, are not considered manufacturers.

(11) "Manufacturing plant" means any facility, site, or other area where a manufacturer engages in the manufacture of tangible personal property.

(12) "Packaging operation" means bagging, boxing, crating, canning, containerizing, cutting, measuring, weighing, wrapping, labeling, palletizing, or other similar processes necessary to prepare or package manufactured products in a manner suitable for sale or delivery to customers as finished goods or suitable for the transport of work in process at or among manufacturing plants for further manufacturing, and the movement of such finished goods or work in process to a storage or distribution area at a manufacturing plant.

(13) "Packaging supplies" means materials, including, but not limited to, containers, labels, sacks, boxes, wraps, fillers, cones, cores, pallets, or bags, used in a packaging operation solely for packaging tangible personal property.

(14) "Real property" means land, any buildings thereon, and any fixtures attached thereto.

(15) "Repair or replacement part" means a part for any machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Repair or replacement parts must be used to maintain, repair, restore, install, or upgrade such machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Examples of repair and replacement parts may include, but are not limited to, oils, greases, hydraulic fluids, coolants, lubricants, machinery clothing, molds, dies, waxes, jigs, and other interchangeable tooling.

(16) "Substantial purpose" means the purpose for which an item of tangible personal property is used more than one-third of the time of the total amount of time that the item is in use; alternatively, instead of time, the purpose may be measured in terms of other applicable criteria, including, but not limited to, the number of items produced.

(b) The sale, use, or storage of machinery or equipment which is necessary and integral to the manufacture of tangible personal property and the sale, use, storage, or consumption of industrial materials or packaging supplies shall be exempt from all sales and use taxation.

(c)(1) Except as otherwise provided in paragraph (4) of this subsection, the sale, use, storage, or consumption of energy which is

necessary and integral to the manufacture of tangible personal property at a manufacturing plant in this state shall be exempt from all sales and use taxation except for the sales and use tax for educational purposes levied pursuant to Part 2 of Article 3 of this chapter and Article VIII, Section VI, Paragraph IV of the Constitution and except for local sales and use taxes for educational purposes authorized by or pursuant to local constitutional amendment. This exemption shall be phased in over a four-year period as follows:

(A) For the period commencing January 1, 2013, and concluding at the last moment of December 31, 2013, such sale, use, storage, or consumption of energy shall be exempt from an amount equal to 25 percent of the total amount of state sales and use tax that would be collected at the rate of 4 percent on such sale, use, storage, or consumption of energy and shall be exempt from an amount equal to 25 percent of the total amount of each local sales and use tax that would be collected at the rate of 1 percent on such sale, use, storage, or consumption of energy;

(B) For the period commencing January 1, 2014, and concluding at the last moment of December 31, 2014, such sale, use, storage, or consumption of energy shall be exempt from an amount equal to 50 percent of the total amount of state sales and use tax that would be collected at the rate of 4 percent on such sale, use, storage, or consumption of energy and shall be exempt from an amount equal to 50 percent of the total amount of each local sales and use tax that would be collected at the rate of 1 percent on such sale, use, storage, or consumption of energy;

(C) For the period commencing January 1, 2015, and concluding at the last moment of December 31, 2015, such sale, use, storage, or consumption of energy shall be exempt from an amount equal to 75 percent of the total amount of state sales and use tax that would be collected at the rate of 4 percent on such sale, use, storage, or consumption of energy and shall be exempt from an amount equal to 75 percent of the total amount of each local sales and use tax that would be collected at the rate of 1 percent on such sale, use, storage, or consumption of energy; and

(D) On or after January 1, 2016, such sale, use, storage, or consumption of energy shall be fully exempt from such sales and use taxation.

(2)(A) Any person making a sale of items qualifying for exemption under paragraph (1) of this subsection shall be relieved of the burden of proving such qualification if the person making the sale receives a certificate from the purchaser certifying that the purchase is exempt under this subsection.

(B) Any person who qualifies for the exemption under paragraph (1) of this subsection shall notify and certify to the person making the qualified sale that such exemption is applicable to the sale.

(3) With respect to services which are regularly billed on a monthly basis, the exemption under paragraph (1) of this subsection shall become effective with respect to and the exemption shall apply to services billed on or after January 1, 2013.

(4) If a competitive project of regional significance under paragraph (93) of Code Section 48-8-3 is started in a county or municipality, it shall not be subject to the phase-in period contained in subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, but such project shall receive the full exemption provided for in subparagraph (D) of paragraph (1) of this subsection notwithstanding the January 1, 2016, limitation in that subparagraph.

(d) The exemptions under this Code section shall be applied as follows:

(1) The manufacture of tangible personal property commences as industrial materials are received at a manufacturing plant and concludes once the packaging operation is complete and the tangible personal property is ready for sale or shipment, regardless of whether the manufacture of tangible personal property occurs at one or more separate manufacturing plants;

(2) For machinery or equipment that has multiple purposes, some purposes necessary and integral to the manufacture of tangible personal property and some purposes not necessary and integral to the manufacture of tangible personal property, the substantial purpose of such machinery or equipment will prevail for purposes of determining the eligibility for exemption. The commissioner shall consider any reasonable methodology for measuring the substantial purpose of machinery or equipment for which the substantial purpose is not readily identifiable;

(3) For leased machinery or equipment that did not qualify for an exemption at the date of lease inception and subsequently qualifies for the exemption under this Code section, the exemption shall apply to all lease payments made subsequent to such qualification;

(4) Miscellaneous spare parts for which the ultimate use of the spare parts is unknown at the time of purchase are eligible for the exemption as repair or replacement parts. However, use tax must be accrued and remitted if spare parts are withdrawn from the inventory of spare parts and used for any purpose other than to maintain, repair, restore, install, or upgrade machinery or equipment that is necessary and integral to the manufacture of tangible personal property; and

(5) Energy necessary and integral to the manufacture of tangible personal property includes energy used to operate machinery or equipment, to create conditions necessary for the manufacture of tangible personal property, or to perform an actual part of the manufacture of tangible personal property; energy used in administrative or other ancillary activities that are located and performed at the manufacturing plant so long as such activities primarily benefit such manufacture of tangible personal property; energy used in related operations that convey, transport, handle, or store raw materials or finished goods at the manufacturing plant; energy used for heating, cooling, ventilation, illumination, fire safety or prevention, and personal comfort and convenience of the manufacturer's employees at the manufacturing plant; and energy used for any other purpose at a manufacturing plant.

(e) Examples that qualify as necessary and integral to the manufacture of tangible personal property include, but are not limited to:

(1) Machinery or equipment used to convey or transport industrial materials, work in process, consumable supplies, or packaging materials at or among manufacturing plants or to convey and transport finished goods to a distribution or storage point at the manufacturing plant. Specific examples may include, but are not limited to, forklifts, conveyors, cranes, hoists, and pallet jacks;

(2) Machinery or equipment used to gather, arrange, sort, mix, measure, blend, heat, cool, clean, or otherwise treat, prepare, or store industrial materials for further manufacturing;

(3) Machinery or equipment used to control, regulate, heat, cool, or produce energy for other machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Specific examples may include, but are not limited to, boilers, chillers, condensers, water towers, dehumidifiers, humidifiers, heat exchangers, generators, transformers, motor control centers, solar panels, air dryers, and air compressors;

(4) Testing and quality control machinery or equipment located at a manufacturing plant used to test the quality of industrial materials, work in process, or finished goods;

(5) Starters, switches, circuit breakers, transformers, wiring, piping, and other electrical components, including associated cable trays, conduit, and insulation, located between a motor control center and exempt machinery or equipment or between separate units of exempt machinery or equipment;

(6) Machinery or equipment used to maintain, clean, or repair exempt machinery or equipment;

(7) Machinery or equipment used to provide safety for the employees working at a manufacturing plant, including, but not limited to, safety machinery and equipment required by federal or state law, gloves, ear plugs, face masks, protective eyewear, hard hats or helmets, or breathing apparatuses, regardless of whether the items would otherwise be considered consumable supplies;

(8) Machinery or equipment used to condition air or water to produce conditions necessary for the manufacture of tangible personal property, including pollution control machinery or equipment and water treatment systems;

(9) Pollution control, sanitizing, sterilizing, or recycling machinery or equipment;

(10) Industrial materials bought for further processing in the manufacture of tangible personal property for sale or further processing or any part of the industrial material or by-product thereof which becomes a wasteful product contributing to pollution problems and which is used up in a recycling or burning process;

(11) Machinery or equipment used in quarrying and mining activities, including blasting, extraction, and crushing; and

(12) Energy used at a manufacturing plant. (Code 1981, § 48-8-3.2, enacted by Ga. L. 2012, p. 257, § 5-2/HB 386.)

Effective date. — This Code section became effective January 1, 2013. See editor's note for exception.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, "or after January 1, 2013" was substituted for "or after the effective date of this Code section" at the end of paragraph (c)(3) and "paragraph (93)" was substituted for "paragraph (92)" in paragraph (c)(4).

Editor's notes. — Ga. L. 2012, p. 257, § 7-1(a)/HB 386, not codified by the General Assembly, provides that paragraph (c)(4) of this Code section becomes effective April 19, 2012.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage

of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Law reviews. — For article on the 2012 enactment of this Code section, see 29 Ga. St. U.L. Rev. 112 (2012).

48-8-3.3. Definitions; applicability; criteria for eligibility; rules and regulations; dealer performing both manufacturing and agricultural operations; exemption.

(a) As used in this Code section, the term:

(1)(A) "Agricultural machinery and equipment" means machinery and equipment used in the production of agricultural products, including, but not limited to, machinery and equipment used in the production of poultry and eggs for sale, including, but not limited to, equipment used in the cleaning or maintenance of poultry houses and the surrounding premises; in hatching and breeding of poultry and the breeding of livestock and equine; in production, processing, and storage of fluid milk for sale; in drying, ripening, cooking, further processing, or storage of agricultural products, including, but not limited to, orchard crops; in production of livestock and equine for sale; by a producer of poultry, eggs, fluid milk, equine, or livestock for sale; for the purpose of harvesting agricultural products to be used on the farm by that producer as feed for poultry, equine, or livestock; directly in tilling the soil or in animal husbandry when the machinery is incorporated for the first time or as additional machinery for the first time into a new or an existing farm unit engaged in tilling the soil or in animal husbandry in this state; directly in tilling the soil or in animal husbandry when the machinery is bought to replace machinery in an existing farm unit already engaged in tilling the soil or in animal husbandry in this state; machinery and equipment used exclusively for irrigation of agricultural products, including, but not limited to, fruit, vegetable, and nut crops; and machinery and equipment used to cool agricultural products in storage facilities.

(B) "Agricultural machinery and equipment" also means farm tractors and attachments to the tractors; off-road vehicles used primarily in the production of nursery and horticultural crops; self-propelled fertilizer or chemical application equipment sold to persons engaged primarily in producing agricultural products for sale and which are used exclusively in tilling, planting, cultivating, and harvesting agricultural products, including, but not limited to, growing, harvesting, or processing onions, peaches, blackberries, blueberries, or other orchard crops, nursery, and other horticultural crops; devices and containers used in the transport and shipment of agricultural products; aircraft exclusively used for spraying agricultural crops; pecan sprayers, pecan shakers, and other equipment used in harvesting pecans sold to persons engaged in the growing, harvesting, and production of pecans; and off-road equipment and related attachments which are sold to or used by persons engaged primarily in the growing or harvesting of timber and which are used exclusively in site preparation, planting, cultivating, or harvesting timber. Equipment used in harvesting shall include all off-road equipment and related attachments used in every forestry procedure starting with the severing of a tree from the ground until and including the point at which the tree or its

parts in any form has been loaded in the field in or on a truck or other vehicle for transport to the place of use. Such off-road equipment shall include, but not be limited to, skidders, feller bunchers, debarkers, delimbers, chip harvesters, tub-grinders, woods cutters, chippers of all types, loaders of all types, dozers, mid-motor graders, and the related attachments; grain bins and attachments to grain bins; any repair, replacement, or component parts installed on agricultural machinery and equipment; trailers used to transport agricultural products; all-terrain vehicles and multipassenger rough-terrain vehicles; and any other off-road vehicles used directly and principally in the production of agricultural or horticultural products.

(2) "Agricultural operations" or "agricultural products" means raising, growing, harvesting, or storing of crops; feeding, breeding, or managing livestock, equine, or poultry; producing or storing feed for use in the production of livestock, including, but not limited to, cattle, calves, swine, hogs, goats, sheep, equine, and rabbits, or for use in the production of poultry, including, but not limited to, chickens, hens, ratites, and turkeys; producing plants, trees, Christmas trees, fowl, equine, or animals; or the production of aquacultural, horticultural, viticultural, silvicultural, grass sod, dairy, livestock, poultry, egg, and apiarian products. Agricultural products are considered grown in this state if such products are grown, produced, or processed in this state, whether or not such products are composed of constituent products grown or produced outside this state.

(3) "Agricultural production inputs" means seed; seedlings; plants grown from seed, cuttings, or liners; fertilizers; insecticides; livestock and poultry feeds, drugs, and instruments used for the administration of such drugs; fencing products and materials used to produce agricultural products; fungicides; rodenticides; herbicides; defoliants; soil fumigants; plant growth regulating chemicals; desiccants, including, but not limited to, shavings and sawdust from wood, peanut hulls, fuller's earth, straw, and hay; feed for animals, including, but not limited to, livestock, fish, equine, hogs, or poultry; sugar used as food for honeybees kept for the commercial production of honey, beeswax, and honeybees; cattle, hogs, sheep, equine, poultry, or bees when sold for breeding purposes; ice or other refrigerants, including, but not limited to, nitrogen, carbon dioxide, ammonia, and propylene glycol used in the processing for market or the chilling of agricultural products in storage facilities, rooms, compartments, or delivery trucks; materials, containers, crates, boxes, labels, sacks, bags, or bottles used for packaging agricultural products when the product is either sold in the containers, sacks, bags, or bottles directly to the consumer or when such use is incidental to the sale of the product for resale; and containers, plastic, canvas, and other fabrics used in the

care and raising of agricultural products or canvas used in covering feed bins, silos, greenhouses, and other similar storage structures.

(4) "Energy used in agriculture" means fuels used for agricultural purposes, other than fuels subject to prepaid state tax as defined in Code Section 48-8-2. The term includes, but is not limited to, off-road diesel, propane, butane, electricity, natural gas, wood, wood products, or wood by-products; liquefied petroleum gas or other fuel used in structures in which broilers, pullets, or other poultry are raised, in which swine are raised, in which dairy animals are raised or milked or where dairy products are stored on a farm, in which agricultural products are stored, and in which plants, seedlings, nursery stock, or floral products are raised primarily for the purposes of making sales of such plants, seedlings, nursery stock, or floral products for resale; electricity or other fuel for the operation of an irrigation system which is used on a farm exclusively for the irrigation of agricultural products; and electricity or other fuel used in the drying, cooking, or further processing of raw agricultural products, including, but not limited to, food processing of raw agricultural products.

(5) "Qualified agriculture producer" includes producers of agricultural products who meet one of the following criteria:

(A) The person or entity is the owner or lessee of agricultural land or other real property from which \$2,500.00 or more of agricultural products were produced and sold during the year, including payments from government sources;

(B) The person or entity is in the business of providing for-hire custom agricultural services, including, but not limited to, plowing, planting, harvesting, growing, animal husbandry or the maintenance of livestock, raising or substantially modifying agricultural products, or the maintenance of agricultural land from which \$2,500.00 or more of such services were provided during the year;

(C) The person or entity is the owner of land that qualifies for taxation under the qualifications of bona fide conservation use property as defined in Code Section 48-5-7.4 or qualifies for taxation under the provisions of the Georgia Forest Land Protection Act as defined in Code Section 48-5-7.7;

(D) The person or entity is in the business of producing long-term agricultural products from which there might not be annual income, including, but not limited to, timber, pulpwood, orchard crops, pecans, and horticultural or other multiyear agricultural or farm products. Applicants must demonstrate that sufficient volumes of such long-term agricultural products will be produced which have the capacity to generate at least \$2,500.00 in sales annually in the future; or

(E) The person or entity must establish, to the satisfaction of the Commissioner of Agriculture, that the person or entity is actively engaged in the production of agricultural products and has or will have created sufficient volumes to generate at least \$2,500.00 in sales annually.

(b) The sales and use taxes levied or imposed by this article shall not apply to sales to, or use by, a qualified agriculture producer of agricultural production inputs, energy used in agriculture, and agricultural machinery and equipment.

(c) The Commissioner of Agriculture, at his or her discretion, may use one or both of the following criteria as a tool to determine eligibility under this Code section:

(1) Business activity on IRS schedule F (Profit or Loss from Farming); or

(2) Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or schedule E (Supplemental Income and Loss).

(d) Qualified agricultural producers that meet the criteria provided for in paragraph (5) of subsection (a) of this Code section must apply to the Commissioner of Agriculture to request an agricultural sales and use tax exemption certificate that contains an exemption number. To facilitate the use of the exemption certificate, a wallet-sized card containing that same information shall also be issued by the Commissioner of Agriculture.

(e) The Commissioner of Agriculture is authorized to promulgate rules and regulations governing the issuance of agricultural exemption certificates and the administration of this Code section. The Commissioner of Agriculture is authorized to establish an oversight board and direct staff and is authorized to charge annual fees of not less than \$15.00 nor more than \$25.00 per year in accordance with Code Section 2-1-5, but in no event shall the total amount of the proceeds from such fees exceed the cost of administering this Code section.

(f) A dealer that performs both manufacturing and agricultural operations at a single place of business may avail itself of the exemptions under either Code Section 48-8-3.2 or this Code section, but not both, for that place of business in any one calendar year. (Code 1981, § 48-8-3.3, enacted by Ga. L. 2012, p. 257, § 5-3/HB 386; Ga. L. 2013, p. 7, § 5/HB 266.)

Effective date. — This Code section became effective January 1, 2013.

The 2013 amendment, effective March 5, 2013, substituted “purposes, other than fuels subject to prepaid state tax as defined in Code Section 48-8-2. The

term includes, but is not limited” for “purposes, including, but not limited” near the beginning of the first sentence of paragraph (a)(4); and added subsection (f).

Editor’s notes. — Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the Gen-

eral Assembly, provides: “Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act.” This Act was effective January 1, 2013.

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: “This Act shall not abate any pros-

ecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act.” This Act was effective January 1, 2013.

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Law reviews. — For article on the 2012 enactment of this Code section, see 29 Ga. St. U.L. Rev. 112 (2012).

48-8-4. Nonapplicability of use tax to agricultural products, poultry, and livestock used by producer.

The use tax shall not apply to livestock, livestock products, poultry, poultry products, farm products, and agricultural products produced by the farmer and used by him and the members of his family. (Ga. L. 1951, p. 360, § 12; Code 1933, § 91A-4515, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, §§ 168 et seq., 187.

48-8-5. Exemption of agricultural commodities not sold as finished product to ultimate consumer; “agricultural commodity” defined.

(a) For the purposes of this Code section, the term “agricultural commodity” means horticultural, poultry, and farm products and livestock and livestock products.

(b) Each agricultural commodity sold by any person other than a producer to any other person who purchases not for direct consumption but for the purpose of acquiring raw products for use or for sale in the process of preparing, finishing, or manufacturing the agricultural commodity for the ultimate retail consumer trade is exempted from all provisions of this article including payment of the tax applicable to the sale, storage, use, transfer, or any other utilization or handling of the commodity, except when the commodity is actually sold as a marketable or finished product to the ultimate consumer. (Ga. L. 1951, p. 360, § 12; Code 1933, § 91A-4516, enacted by Ga. L. 1978, p. 309, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Retail sales are not exempt. — Retail sales by farmers or any other persons, including those who buy from the farmer and resell to the public, and those mer-

chants who employ persons to operate stalls on the premises of state farmers' markets, are subject to sales tax. 1969 Op. Att'y Gen. No. 69-260.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, §§ 80, 86, 187.

ALR. — Legislative power to exempt from taxation property, purposes, or uses additional to those specified in Constitution, 61 ALR2d 1031.

48-8-6. Prohibition of political subdivisions from imposing various taxes; ceiling on local sales and use taxes; taxation of mobile telecommunications.

(a) There shall not be imposed in any jurisdiction in this state or on any transaction in this state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent. For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and use tax which is levied in an area consisting of less than the entire state, however authorized, including such taxes authorized by or pursuant to constitutional amendment, except that the following taxes shall not count toward or be subject to such 2 percent limitation:

(1) A sales and use tax for educational purposes exempted from such limitation under Article VIII, Section VI, Paragraph IV of the Constitution;

(2) Any tax levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment; provided, however, that the exception provided for under this paragraph shall only apply:

(A) In a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, water and sewer projects and costs as defined under paragraph (4) of Code Section 48-8-200, or any combination thereof and with respect to which the county has entered into an intergovernmental contract with a municipality, in which the average waste-water system flow of such municipality is not less than 85 million gallons per day, allocating proceeds to such municipality to be used solely for water and sewer projects and costs as defined under paragraph (4) of Code Section 48-8-200. The exception provided for under this subparagraph shall apply only during the period the tax under said subparagraph (a)(1)(D) is in effect. The exception provided for under this subparagraph shall

not apply in any county in which a tax is being imposed under Article 2A of this chapter; or

(B) In a county in which the tax levied for purposes of a metropolitan area system of public transportation is first levied after January 1, 2010, and before November 1, 2012. Such tax shall not apply to the following:

(i) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport. For purposes of this division, a “qualifying airline” means any person which is authorized by the Federal Aviation Administration or another appropriate agency of the United States to operate as an air carrier under an air carrier operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire. For purposes of this division, a “qualifying airport” means any airport in the state that has had more than 750,000 takeoffs and landings during a calendar year; and

(ii) The sale of motor vehicles;

(3) In the event of a rate increase imposed pursuant to Code Section 48-8-96, only the amount in excess of the initial 1 percent sales and use tax and in the event of a newly imposed tax pursuant to Code Section 48-8-96, only the amount in excess of a 1 percent sales and use tax;

(4) A sales and use tax levied under Article 4 of this chapter; and

(5) A sales and use tax levied under Article 5 of this chapter.

If the imposition of any otherwise authorized local sales tax, local use tax, or local sales and use tax would result in a tax rate in excess of that authorized by this subsection, then such otherwise authorized tax may not be imposed.

(b) Reserved.

(c) Where the exception specified in paragraph (2) of subsection (a) of this Code section applies, the tax imposed under subparagraph (a)(1)(D) of Code Section 48-8-111 shall not apply to:

(1) Reserved; and

(2) The sale of motor vehicles.

(c.1) Where the exception specified in paragraph (2) of subsection (a) of this Code section applies, on and after July 1, 2007, the aggregate amount of all excise taxes imposed under paragraph (5) of subsection (a) of Code Section 48-13-51 and all sales and use taxes shall not exceed 14 percent.

(d) Notwithstanding any law or ordinance to the contrary, any tax, charge, or fee levied by any political subdivision of this state and applicable to mobile telecommunications services, as defined in Section 124(7) of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 124(7), shall apply only if the customer's place of primary use is located within the boundaries of the political subdivision levying such local tax, charge, or fee. For purposes of this subsection, the provisions of Code Section 48-8-13 shall apply in the same manner and to the same extent as such provisions apply to the tax levied by Code Section 48-8-1 on mobile telecommunications services. This subsection shall not be construed to authorize the imposition of any tax, charge, or fee. (Ga. L. 1951, p. 360, § 25; Ga. L. 1965, p. 451, § 3; Ga. L. 1971, p. 85, § 1A; Ga. L. 1971, p. 95, § 1; Ga. L. 1975, p. 984, § 1; Ga. L. 1975, p. 1002, § 6; Ga. L. 1977, p. 744, § 5; Code 1933, § 91A-4534, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 3, § 37; Ga. L. 1985, p. 232, § 3; Ga. L. 2002, p. 576, § 1; Ga. L. 2002, p. 970, § 1; Ga. L. 2003, p. 665, § 13; Ga. L. 2004, p. 69, § 5; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2010, p. 662, § 3/HB 1221; Ga. L. 2010, p. 778, § 5/HB 277; Ga. L. 2010, p. 813, § 1/HB 1393; Ga. L. 2010, p. 878, § 48/HB 1387.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, subsection (c) as enacted by Ga. L. 2002, p. 970, § 1, was redesignated as subsection (d).

Pursuant to Code Section 28-9-5, in 2004, subsection (d) as added by Ga. L. 2004, p. 69, § 5 was redesignated as subsection (c.1).

Pursuant to Code Section 28-9-5, in 2010, subsection (b) was set out as reserved and "paragraph (2) of subsection (a)" was substituted for "paragraph (2) of subsection (b)" in the introductory language of subsection (c) and in subsection (c.1).

Editor's notes. — Ga. L. 2002, p. 970, § 4, not codified by the General Assembly, provides that: "If a court of competent jurisdiction enters a final judgment on the merits that is based on federal law, is no longer subject to appeal, and substantially limits or impairs the essential elements of Sections 116 through 126 of Title 4 U.S.C., then all provisions and applications of this Act are declared to be invalid and have no legal effect as of the date of entry of such judgment."

Ga. L. 2002, p. 970, § 5, not codified by the General Assembly, provides that this Act "shall apply to charges for mobile telecommunications services reflected on customer bills issued on or after August 2, 2002."

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2010, p. 778, § 1/HB 277, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Investment Act of 2010.'"

Law reviews. — For article on 2004 amendment of this Code section, see 21 Ga. St. U.L. Rev. 226 (2004).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

JUDICIAL DECISIONS

Tax forbidden whether incidence is on seller or purchaser. — This section forbids the imposition of a sales or use tax by a municipality, regardless of whether the legal incidence of such tax is placed on the seller or the purchaser. *City of Columbus v. Atlanta Cigar Co.*, 111 Ga. App. 774, 143 S.E.2d 416 (1965).

Exception for taxes otherwise authorized by General Assembly is not a grant of power to tax. — This section grants no power. It merely states that the section was not intended as a prohibition upon any otherwise existing power of counties to levy an excise tax upon these

items. *Chanin v. Bibb County*, 234 Ga. 282, 216 S.E.2d 250 (1975).

Ordinance imposing cigarette tax violates Constitution, this section, and Ch. 11 of this title. — City ordinance which placed a tax on cigarettes sold, stored, or delivered within the municipality was contrary to this section, former Code 1933, Ch. 92-22, and Ga. Const. 1945, Art. I, Sec. IV, Para. I which forbid the enactment of special laws for which provision had been made by an existing general law. *City of Columbus v. Atlanta Cigar Co.*, 111 Ga. App. 774, 143 S.E.2d 416 (1965).

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application of state and local public-utility-gross-receipts-tax statutes — modern cases, 58 ALR5th 187.

48-8-7. Violation of article; penalty.

(a) It shall be unlawful for any dealer to knowingly and willfully fail, neglect, or refuse to collect the tax provided in this article, either by himself or through his agents or employees.

(b) In addition to the penalty of being liable for and paying the tax himself, any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than \$10,000.00 or imprisonment for not more than five years, or both. (Ga. L. 1951, p. 360, § 12; Code 1933, § 91A-9934, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2006, p. 181, § 1/HB 1506.)

Editor's notes. — Ga. L. 2006, p. 181, § 5/HB 1506, not codified by the General Assembly, provides that: "This Act shall not apply to any offense committed before

July 1, 2006. Any such offense shall be punishable as provided by the statute in effect at the time the offense was committed."

JUDICIAL DECISIONS

Seller or dealer ultimately responsible for collection even though ultimate liability for payment is on pur-

chaser. — Although the ultimate liability for payment of sales and use tax falls upon the purchaser, and although in the event

of a failure to pay, the commissioner may proceed against either the purchaser or seller, it is nevertheless the intent of the law that the seller or dealer is the entity responsible for collecting and forwarding

the tax, and the dealer's failure to do so subjects the dealer to both civil and criminal penalties in addition to the tax liability. *Dittler Bros. v. AMR Int'l, Inc.*, 142 Ga. App. 570, 236 S.E.2d 544 (1977).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Those charged with offenses un-

der O.C.G.A. § 48-8-7 are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 222.

government sales or use tax funds as constituting larceny or embezzlement, 8 ALR4th 1068.

ALR. — Retailer's failure to pay to

48-8-8. Filing false or fraudulent return by dealer under article; penalty.

(a) It shall be unlawful for any dealer required by this article to knowingly and willfully make, render, sign, or verify any return to make a false or fraudulent return with intent to evade the tax levied by this article.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than \$10,000.00 or imprisonment for not more than five years, or both. (Ga. L. 1951, p. 360, § 18; Code 1933, § 91A-9941, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2006, p. 181, § 2/HB 1506.)

Editor's notes. — Ga. L. 2006, p. 181, § 5/HB 1506, not codified by the General Assembly, provides that: "This Act shall not apply to any offense committed before

July 1, 2006. Any such offense shall be punishable as provided by the statute in effect at the time the offense was committed."

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Those charged with offenses un-

der O.C.G.A. § 48-8-8 are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 222.

seq., 115, 123 et seq. 84 C.J.S., Taxation, §§ 542, 547. 85 C.J.S., Taxation, §§ 1715, 1724 et seq., 1785.

C.J.S. — 37 C.J.S., Fraud, §§ 12 et

ALR. — Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement, 8 ALR4th 1068.

48-8-9. Failure by dealer to furnish return under article; penalty.

(a) It shall be unlawful for any dealer subject to this article to knowingly and willfully fail or refuse to furnish any return required to be made by this article or to fail or refuse to furnish a supplemental return or other data required by the commissioner.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than \$10,000.00 or imprisonment for not more than five years, or both. (Ga. L. 1951, p. 360, § 18; Code 1933, § 91A-9940, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2006, p. 181, § 3/HB 1506.)

Editor's notes. — Ga. L. 2006, p. 181, § 5/HB 1506, not codified by the General Assembly, provides that: "This Act shall not apply to any offense committed before July 1, 2006. Any such offense shall be punishable as provided by the statute in effect at the time the offense was committed."

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Those charged with offenses under O.C.G.A. § 48-8-9 are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

Percentage of local option sales and use tax to absent municipality. — Absent municipality cannot be forced under O.C.G.A. § 48-8-89 to accept a smaller percentage of the local option sales and use tax proceeds distributed to all quali-

fied municipalities in the county than the percentage the absent municipality's population is of the total population of all such qualified municipalities, regardless of whether that distribution is pursuant to a negotiated certificate or is based instead on an order by a superior court judge when the necessary parties are unable to agree. 2012 Op. Att'y Gen. No. U12-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 120.

ALR. — Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement, 8 ALR4th 1068.

48-8-10. Failure by dealer to keep or to allow inspection of records under article; penalty.

(a) It shall be unlawful for any dealer subject to this article to knowingly and willfully fail to keep records or to fail to open the records to inspection as required by law.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than \$10,000.00 or imprisonment for not more than five years, or both. (Ga. L. 1951, p. 360, § 17; Code 1933, § 91A-9939, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2006, p. 181, § 4/HB 1506.)

Editor's notes. — Ga. L. 2006, p. 181, § 5/HB 1506, not codified by the General Assembly, provides that: "This Act shall not apply to any offense committed before

July 1, 2006. Any such offense shall be punishable as provided by the statute in effect at the time the offense was committed."

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Those charged with offenses un-

der O.C.G.A. § 48-8-10 are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 120.

ALR. — Retailer's failure to pay to

government sales or use tax funds as constituting larceny or embezzlement, 8 ALR4th 1068.

48-8-11. Violation of any other provision of article; penalty.

(a) It shall be unlawful for any dealer to violate any other provision of this article for which punishment is not otherwise provided.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1951, p. 360, § 18; Code 1933, § 91A-9943, enacted by Ga. L. 1978, p. 309, § 2.)

JUDICIAL DECISIONS

Only dealers can be penalized under this section. *Bunge v. State*, 149 Ga. App. 712, 256 S.E.2d 23 (1979).

Liability of dealers who are corporate officers or employees. — Since a

corporate officer or employee may also be a dealer, it is clear that a dealer can violate Ga. L. 1960, p. 210, §§ 1, 2, though by definition only if the dealer is also an officer or employee in charge. *Bunge v.*

State, 149 Ga. App. 712, 256 S.E.2d 23 (1979).

Defendant cannot assert that acts in the form of corporate acts are not defendant's acts merely because the

acts are carried out by the defendant through the instrumentality of the corporation. *Bunge v. State*, 149 Ga. App. 712, 256 S.E.2d 23 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 222.

48-8-12. Refusal by transportation company, agency, firm, or person to allow examination of its books, records, and other documents under article; penalty.

(a) With respect to this article, it shall be unlawful for any transportation company, agency, firm, or person to refuse to permit the examination of its books, records, and other documents by the commissioner as provided by law.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1951, p. 360, § 17; Code 1933, § 91A-9938, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 222.

48-8-13. Taxing jurisdiction for mobile telecommunications services.

(a) For purposes of this Code section, the terms and corresponding definitions set forth in 4 U.S.C. Section 124 shall apply. In addition, as used in this Code section, the term:

(1) "Enhanced ZIP Code" means a United States postal ZIP Code of 9 or more digits.

(2) "Fee" shall include, without limitation, any emergency 9-1-1 charge imposed pursuant to Part 4 of Article 2 of Chapter 5 of Title 46.

(3) "FIPS" means the Federal Information Processing Standard (FIPS) 55-3 or any future enhancement.

(4) "Home service provider" means the facilities based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(5) “Mobile telecommunications service” means commercial mobile radio service, as such term is defined in 47 C.F.R. Section 20.3 as in effect on June 1, 1999, or as subsequently amended.

(6) “Place of primary use” means the street address representative of where the customer’s use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. At such time as the state certifies a master street address data base covering all or a portion of the state, addresses within the area so covered shall be identified by FIPS code. If the state has not designated such a data base, a home service provider desiring to be held harmless from any tax, charge, or fee liability under the provisions of 4 U.S.C. Section 120 shall employ an enhanced ZIP Code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercise due diligence at each level of taxing jurisdiction to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced ZIP Code overlaps boundaries of taxing jurisdictions of the same level, the home service provider shall designate one specific jurisdiction within such enhanced ZIP Code for use in taxing the activity for such enhanced ZIP Code for each level of taxing jurisdiction.

(7) “Taxing jurisdiction” means the state or any municipality or county.

(b) Subject to the provisions of 4 U.S.C. Section 116(c), the tax levied by this chapter shall apply only to those charges for mobile telecommunications services subject to tax that are deemed to be provided to a customer by a home service provider pursuant to 4 U.S.C. Section 117(a) if the customer’s place of primary use is located within this state, regardless of where the mobile telecommunications services originate, terminate, or pass through.

(c) If a customer believes that an amount of tax, charge, or fee or an assignment of place of primary use or taxing jurisdiction included on a bill under the provisions of this Code section is erroneous, the customer shall notify the home service provider in writing to the address provided as required by subsection (g) of this Code section. The customer shall include in this written notification the street address for the customer’s place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the home service provider reasonably requires to process the request. Within 60 days of receiving a notice under this subsection, the home service provider shall review its records to determine the customer’s taxing jurisdiction. If this review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is in error,

the home service provider shall correct the error and refund or credit the amount of tax, charge, or fee erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer. The procedures in this subsection shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction or a refund of or other compensation for taxes, charges, or fees erroneously collected by the home service provider, and no cause of action based upon a dispute arising from such taxes, charges, or fees shall accrue until a customer has exhausted the remedies set forth in this subsection.

(d)(1) If a mobile telecommunications service is not subject to the tax levied by this chapter, and if the amount charged for such mobile telecommunications service is aggregated with and not separately stated from the amount paid or charged for any service that is subject to such tax, then the nontaxable mobile telecommunications service shall be treated as being subject to such tax unless the home service provider can reasonably identify the amount paid or charged for the mobile telecommunications service not subject to such tax from its books and records kept in the regular course of business.

(2) If a mobile telecommunications service is not subject to the tax levied by this chapter, a customer may not rely upon the nontaxability of such mobile telecommunications service unless the customer's home service provider separately states the amount charged for such nontaxable mobile telecommunications service or the home service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business that reasonably identify the amount charged for such nontaxable mobile telecommunications service.

(e)(1) A mobile telecommunications services provider who is obligated to remit or pay the tax levied by this chapter shall be held harmless from any liability, including tax, interest, and penalties, which would otherwise be due solely as a result of an assignment of a place of primary use to an incorrect jurisdiction, if the mobile telecommunications services provider satisfies the requirements of 4 U.S.C. Section 120(a).

(2)(A) The department may elect to provide an electronic data base that satisfies the requirements of 4 U.S.C. Section 119. If the department provides such data base, a home service provider using the data contained in such data base shall be held harmless from

any liability, including tax, interest, and penalties, which would otherwise be due solely as a result of an assignment of a place of primary use to an incorrect local jurisdiction.

(B) Paragraph (1) of this subsection shall apply to a home service provider who is in compliance with the terms of such paragraph until the later of:

(i) Eighteen months after the approval described in 4 U.S.C. Section 119(a); or

(ii) Six months after the department provides an electronic data base that satisfies the requirements of 4 U.S.C. Section 119.

(3) A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use. Subject to paragraph (5) of this subsection, if the home service provider's reliance on information provided by its customer is in good faith:

(A) The home service provider shall be entitled to rely on the applicable residential or business street address supplied by such customer; and

(B) The home service provider shall be held harmless from liability for any additional tax, including any related interest or penalties, which is based on a different determination of such customer's place of primary use.

(4) Except as provided in paragraph (5) of this subsection, a home service provider shall be allowed to treat the address used for purposes of the tax levied by this chapter for any customer under a service contract in effect on August 1, 2002, as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement.

(5)(A) If the department determines that the address used by a home service provider as a customer's place of primary use does not meet the definition of "place of primary use," the department shall notify such customer of such determination and provide such customer an opportunity to demonstrate that such address satisfies such definition.

(B) If the customer fails to demonstrate that the address meets the definition of such customer's place of primary use, the department shall provide the home service provider with the proper address to be used as such customer's place of primary use, and the home service provider shall begin using the address provided by the department as such customer's place of primary use in the next full billing period.

(6)(A) If the department determines that the assignment of a taxing jurisdiction by a home service provider does not reflect the correct taxing jurisdiction, the department shall notify the home service provider of such determination and provide such home service provider an opportunity to demonstrate that the assignment represents the correct taxing jurisdiction.

(B) If the home service provider fails to demonstrate that the assignment reflects the correct taxing jurisdiction, the department shall provide the home service provider with the correct taxing jurisdiction to be used, and the home service provider shall begin using the taxing jurisdiction provided by the department in the next full billing period.

(f) A home service provider shall identify each customer's place of primary use and shall provide at least quarterly a complete listing of the total number of customers to the Georgia Emergency Management Agency. The home service provider shall indicate in such report whether it is employing an enhanced ZIP Code to assign each street address to a specific taxing jurisdiction so as to qualify for the safe harbor provisions of 4 U.S.C. Section 120. Further, each home service provider shall, upon request, provide information showing the total number of billings and the amount of fees collected to any taxing jurisdiction as to the customers whose place of primary use is within the jurisdiction of such taxing jurisdiction; provided, however, that in no event shall customer identification be required to be released. Such information shall initially be made available not later than July 1, 2006.

(g) A home service provider shall clearly state on each customer bill or invoice the following information:

(1) The taxing jurisdiction to which each tax and fee charged to the customer is paid and the amount paid to each taxing jurisdiction; provided, however, that such information shall initially be made available not later than July 1, 2006; and

(2) An address, telephone number, or electronic method for the customer to send the notification required by subsection (c) of this Code section or otherwise. (Code 1981, § 48-8-13, enacted by Ga. L. 2002, p. 970, § 2; Ga. L. 2005, p. 660, § 10/HB 470; Ga. L. 2009, p. 8, § 48/SB 46.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, in paragraph (d)(2), “identify” was substituted for “indentifes” and, in subsection (e), “data base” was substituted for “database” in subparagraph (e)(2)(A) and division

(e)(2)(B)(ii) and “is” was substituted for “are” in subparagraph (e)(3)(B).

Editor's notes. — Ga. L. 2002, p. 970, § 4, not codified by the General Assembly, provides that: “If a court of competent jurisdiction enters a final judgment on the

merits that is based on federal law, is no longer subject to appeal, and substantially limits or impairs the essential elements of Sections 116 through 126 of Title 4 U.S.C., then all provisions and applications of this Act are declared to be invalid and have no legal effect as of the date of entry of such judgment.”

Ga. L. 2002, p. 970, § 5, not codified by the General Assembly, provides that this Code section “shall apply to charges for mobile telecommunications services reflected on customer bills issued on or after August 2, 2002.”

48-8-14. Restrictions on state contracts with nongovernmental vendors filing or refusing to collect sales or use taxes.

(a) As used in this Code section, the term “state agency” means any authority, board, department, instrumentality, institution, agency, or other unit of state government. The term “state agency” shall not include any county, municipality, or local or regional governmental authority.

(b) On or after April 12, 2005, the Department of Administrative Services and any other state agency shall not enter into a state-wide contract or agency contract for goods or services, or both, in an amount exceeding \$100,000.00 with a nongovernmental vendor if the vendor or an affiliate of the vendor is a dealer as defined in Code Section 48-8-2, or meets one or more of the conditions thereunder, but fails or refuses to collect sales or use taxes levied under this chapter on its sales delivered to Georgia.

(c) The Department of Administrative Services and any other state agency may contract for goods or services, or both, with a source prohibited under subsection (b) of this Code section in the event of an emergency or where the nongovernmental vendor is the sole source of such goods or services or both.

(d) The determination of whether a vendor is a prohibited source shall be made by the Department of Revenue, which shall notify the Department of Administrative Services and any other state agency of its determination within three business days of a request for such determination.

(e) Prior to awarding a contract, the Department of Administrative Services and any other state agency to which this article applies shall provide the Department of Revenue the name of the nongovernmental vendor awarded the contract, the name of the vendor’s affiliate, and the certificate of registration number as provided for under Code Section 48-8-59 for the vendor and affiliate of the vendor.

(f) The commissioner is specifically authorized to promulgate regulations to implement this Code section. (Code 1981, § 48-8-14, enacted by Ga. L. 2005, p. 159, § 22/HB 488; Ga. L. 2006, p. 72, § 48/SB 465; Ga. L. 2010, p. 662, § 4/HB 1221.)

Editor's notes. — Ga. L. 2005, p. 159, known and may be cited as the 'State and § 1/HB 488, not codified by the General Local Tax Revision Act of 2005.' Assembly, provides that: "This Act shall be

48-8-15. State sales and use taxes applicable to the liquid propane gas commodity sold and delivered for residential heating; legislative findings; power and duties of commissioner.

(a) The General Assembly finds that:

(1) Liquid propane gas and natural gas are essential commodities used by all Georgians to heat their homes;

(2) There has been a substantial rise in the prices of liquid propane gas and natural gas since adjournment of the 2005 regular session of the General Assembly such that the prices for liquid propane gas and natural gas for 2006 are projected to far exceed the 2005 prices for these commodities;

(3) The significant increase in liquid propane gas and natural gas prices has burdened and will continue to burden financially all Georgians who must use these commodities to heat their homes during the winter months; and

(4) The significant increase in liquid propane gas and natural gas prices for the winter months of 2006 will result in a windfall to the state in the form of surplus sales and use taxes on these commodities.

(b)(1) For the time period commencing as specified in the Executive Order of the Governor dated December 19, 2005, and filed in the official records of the Office of the Governor as Executive Order 12.19.05.01 and the time period concluding at the end of the third completed billing cycle ending on or before April 30, 2006, state sales and use taxation pursuant to Code Section 48-8-30 as that tax applies to charges for the natural gas commodity billed for residential use shall be governed by the provisions of this Code section notwithstanding any provisions of Code Section 48-8-30, or any other law, to the contrary.

(2) For the time period commencing as specified in the Executive Order of the Governor dated December 19, 2005, and filed in the official records of the Office of the Governor as Executive Order 12.19.05.01 and concluding on the last moment of March 31, 2006, state sales and use taxation pursuant to Code Section 48-8-30 as that tax applies to sales of the liquid propane gas commodity when sold and delivered primarily for residential heating purposes shall be governed by the provisions of this Code section notwithstanding any provisions of Code Section 48-8-30, or any other law, to the contrary.

(c) Sales or use of fuels described in subsection (b) of this Code section shall be exempt from the first 2 percent of the 4 percent state sales and use tax imposed under this chapter and shall be subject to the remaining 2 percent of the 4 percent state sales and use tax imposed under this chapter. The temporary and partial sales and use tax exemption provided for in this subsection shall not apply to local sales and use taxes levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to Article 2, 2A, 3, or 4 of Chapter 8 of this title. Such local taxes shall remain applicable to sales of such fuels.

(d) The tax relief required under this Code section with respect to charges for the natural gas commodity billed for residential use shall be credited or otherwise reflected on a consumer's natural gas bill as soon as practicable and shall apply only with respect to charges billed for the natural gas commodity and not for other enumerated charges.

(e) The failure of the dealer to pass through to the purchaser of any of the fuels described in subsection (b) of this Code section the amount of the tax exemptions, decreases, or reduction under this Code section shall constitute an unfair or deceptive act or practice under Part 2 of Article 15 of Chapter 10 of Title 10, the "Fair Business Practices Act," as amended, and shall be subject to enforcement by the administrator of said Part 2 in the same manner as any other act or practice constituting a violation of said Part 2 and subject to the same remedies and penalties as any other act or practice constituting a violation of said Part 2.

(f) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section. (Code 1981, § 48-8-15, enacted by Ga. L. 2006, p. 1, § 2/HB 970.)

Editor's notes. — Ga. L. 2006, p. 1, § 1/HB 970, not codified by the General Assembly, provides that: "The Executive Order of the Governor dated December 19, 2005, and filed in the official records of the Office of the Governor as Executive Order 12.19.05.01 which suspended the collec-

tion of state sales and use taxation in part as that tax applies to the liquid propane gas commodity sold and delivered primarily for residential heating purposes and to charges for the natural gas commodity for residential use is ratified by the General Assembly of Georgia."

48-8-16. Ratification of Executive Order on sale of dyed fuel oils.

(a) The General Assembly finds that:

(1) The price of dyed fuel oils, as used primarily for off-road, agricultural uses, including timber growing or harvesting and mining or construction, has risen substantially; and

(2) This spike in the price of dyed fuel oils has produced an acute strain on Georgia's agricultural, timber growing or harvesting, and mining or construction sectors.

(b) The General Assembly of Georgia ratifies the Executive Order of the Governor dated May 15, 2008, and filed in the official records of the Office of the Governor as Executive Order 05.15.08.01 which suspended the collection of state sales and use taxation as that tax applies to the sales of dyed fuel oils as defined in paragraph (5.1) of Code Section 48-9-2 which are used exclusively for agricultural purposes, timber growing or harvesting purposes, or mining or construction purposes and used directly by such industry sectors for such purposes and not for highway use as defined in paragraph (8) of Code Section 48-9-2.

(c) For the time period commencing on May 12, 2008, as specified in the Executive Order of the Governor dated May 15, 2008, and filed in the official records of the Office of the Governor as Executive Order 05.15.08.01 and concluding on the last moment of April 30, 2009, state sales and use taxation pursuant to Code Section 48-8-30 as that tax applies to the sale or use of dyed fuel oils, as defined in paragraph (5.1) of Code Section 48-9-2, which are used exclusively for agricultural purposes, timber growing or harvesting purposes, or mining or construction purposes and used directly by such industry sectors for such purposes and not for highway use as defined in paragraph (8) of Code Section 48-9-2 shall be governed by the provisions of this Code section notwithstanding any provisions of Code Section 48-8-30 or any other law to the contrary.

(d) The temporary sales and use tax exemption provided for in this Code section shall not apply to local sales and use taxes levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter. Such local taxes shall remain applicable to sales or uses of such dyed fuel oils.

(e) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section. (Code 1981, § 48-8-16, enacted by Ga. L. 2009, p. 76, § 1/HB 46.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "concluding on the last moment of April 30, 2009," was substituted for "concluding on the last

moment of the earlier of the last day of the month of the effective date of this act or May 31, 2009," in subsection (c).

48-8-17. Suspension of the collection of taxes on gasoline and aviation fuel; ratification of temporary suspension.

(a) The General Assembly finds that:

(1) Motor fuels and aviation gasoline are essential commodities used by Georgians for transportation;

(2) The price of gasoline has increased dramatically since the adjournment of the 2012 General Assembly;

(3) The increases in the cost of gasoline and other motor fuels have and will continue to impose significant financial burdens on all Georgians and Georgia's businesses;

(4) This inflated cost can prevent Georgians from spending on other necessary goods and business expansion; and

(5) The significant increase in motor fuel prices will result in a windfall to the state in the form of surplus state taxes on these commodities; and

(6) Code Section 45-12-22 authorizes the Governor to suspend the collection of taxes, or any part thereof, due the state until the meeting of the next General Assembly.

(b) The General Assembly of Georgia ratifies the Executive Order of the Governor dated June 8, 2012, and filed in the official records of the office of the Governor as Executive Order 06.08.12.01 which suspended commencing on June 8, 2012, the collection of any rate of prepaid state taxes as defined in paragraph (24) of Code Section 48-8-2 to the extent it differs from the rate levied as of January 1, 2012, pursuant to Code Section 48-9-14 as it applies to sales of motor fuel and aviation gasoline as those terms are defined in Code Section 48-9-2. The period of suspension under this subsection shall conclude at the last moment of December 31, 2012.

(c) The ratification of the temporary suspension of collection of prepaid state tax shall not apply to prepaid local taxes as defined in paragraph (23) of Code Section 48-8-2.

(d) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section. (Code 1981, § 48-8-17, enacted by Ga. L. 2013, p. 784, § 1/HB 210.)

Effective date. — This Code section became effective May 6, 2013.

Editor’s notes. — This Code section formerly pertained to the ratification of Executive Order 06.02.08.01 which provided for a temporary prepaid state tax exemption. The former Code section was based on Code 1981, § 48-8-17, enacted by Ga. L. 2009, p. 84, § 1/HB 121; Ga. L. 2010, p. 662, § 5/HB 1221 and was repealed by Ga. L. 2011, Ex. Sess., p. 258, § 1/HB 2EX, effective September 21, 2011.

Subsequently, this Code section formerly pertained to the collection of taxes

on gasoline and aviation fuel. That former Code section was based on Code 1981, § 48-8-17, enacted by Ga. L. 2011, Ex. Sess., p. 258, § 1/HB 2EX, and was repealed by Ga. L. 2013, p. 784, § 1/HB 210, effective May 6, 2013.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U.L. Rev. 217 (2011).

48-8-17.1. Ratification of Executive Order on prepaid taxes; suspension of provisions.

Repealed by Ga. L. 2011, Ex. Sess., p. 258, § 2/HB 2EX, effective September 21, 2011.

Editor’s notes. — This Code section was based on Code 1981, § 48-8-17.1, en-

acted by Ga. L. 2009, p. 84, § 2/HB 121; Ga. L. 2010, p. 662, § 6/HB 1221.

48-8-18. Ratification of Executive Order on pharmaceuticals distributed without cost.

(a) The General Assembly finds that:

(1) Pharmaceutical samples provide a zero-cost option for some Georgians to obtain medication necessary to maintain their health and sustain their lives;

(2) Pharmaceutical medications used in clinical trials are often provided without cost; and

(3) It is in the best interests of Georgians to exempt from sales and use taxes pharmaceutical medications that are distributed without cost for several reasons, including:

(A) The ability to distribute needed medicines to persons who might not otherwise be able to afford them;

(B) The attraction of clinical trials to Georgia for the betterment of the health of Georgians and to continue the state’s place as a leader in cutting-edge health research; and

(C) The elimination of an inconsistency in the law whereby pharmaceutical medicines that are sold at retail are not taxed, but those that are distributed for free are subject to taxation.

(b) The General Assembly of Georgia ratifies the Executive Order of the Governor dated August 29, 2008, and filed in the official records of

the Office of the Governor as Executive Order 08.29.08.01 which suspended the collection of any rate of sales and use taxation as that tax applies to those controlled substances and dangerous drugs, as defined by Code Section 16-13-1, lawfully dispensable by prescription for the treatment of natural persons which are dispensed without charge to physicians, dentists, clinics, hospitals, or any other person or entity located in Georgia by a pharmaceutical manufacturer or distributor and the collection of any such taxes on controlled substances and dangerous drugs, as defined by Code Section 16-13-1, lawfully dispensed without charge for the purposes of a clinical trial approved by an institutional review board which has been accredited by the Association for the Accreditation of Human Research Protection Programs.

(c) For the time period commencing on September 1, 2008, as specified in the Executive Order of the Governor dated August 29, 2008, and filed in the official records of the Office of the Governor as Executive Order 08.29.08.01 and concluding on the last moment of June 30, 2009, sales and use taxation pursuant to Code Section 48-8-30 as that tax applies to those controlled substances and dangerous drugs, as defined by Code Section 16-13-1, lawfully dispensable by prescription for the treatment of natural persons which are dispensed without charge to physicians, dentists, clinics, hospitals, or any other person or entity located in Georgia by a pharmaceutical manufacturer or distributor and as such tax applies to controlled substances and dangerous drugs, as defined by Code Section 16-13-1, lawfully dispensed without charge for the purposes of a clinical trial approved by an institutional review board which has been accredited by the Association for the Accreditation of Human Research Protection Programs, shall be governed by the provisions of this Code section notwithstanding any provisions of Code Section 48-8-30 or any other law to the contrary.

(d) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section. (Code 1981, § 48-8-18, enacted by Ga. L. 2009, p. 79, § 1/HB 59.)

PART 2

IMPOSITION, RATE, COLLECTION, AND ASSESSMENT

48-8-30. Imposition of tax; rates; collection.

(a) There is levied and imposed a tax on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on the services described in this article.

(b)(1) Every purchaser of tangible personal property at retail in this state shall be liable for a tax on the purchase at the rate of 4 percent

of the sales price of the purchase. The tax shall be paid by the purchaser to the retailer making the sale, as provided in this article. The retailer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the retailer. Every person making a sale or sales of tangible personal property at retail in this state shall be a retailer and a dealer and shall be liable for a tax on the sale at the rate of 4 percent of the sales price, or the amount of taxes collected by him from his purchaser or purchasers, whichever is greater.

(2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the purchaser at retail.

(c)(1) Upon the first instance of use, consumption, distribution, or storage within this state of tangible personal property purchased at retail outside this state, the owner or user of the property shall be a dealer and shall be liable for a tax at the rate of 4 percent of the purchase price, except as provided in paragraph (2) of this subsection.

(2) Upon the first instance of use, consumption, distribution, or storage within this state of tangible personal property purchased at retail outside this state and used outside this state for more than six months prior to its first use within this state, the owner or user of the property shall be a dealer and shall be liable for a tax at the rate of 4 percent of the purchase price or fair market value of the property, whichever is the lesser.

(3) This subsection shall not be construed to require a duplication in the payment of the tax. The tax imposed by this subsection shall be subject to the credit otherwise granted by this article for like taxes previously paid in another state.

(c.1)(1) Every purchaser of tangible personal property at retail outside this state from a dealer, as defined in Code Section 48-8-2, when such property is to be used, consumed, distributed, or stored within this state, shall be liable for a tax on the purchase at the rate of 4 percent of the sales price of the purchase. It shall be prima-facie evidence that such property is to be used, consumed, distributed, or stored within this state if that property is delivered in this state to the purchaser or agent thereof. The tax shall be paid by the purchaser to the retailer making the sale, as provided in this article. The retailer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the retailer. Every person who is a dealer, as defined in Code Section 48-8-2, and who makes any sale of tangible personal property at retail outside this state which property is to be delivered in this state to a purchaser or purchaser's agent

shall be a retailer and a dealer for purposes of this article and shall be liable for a tax on the sale at the rate of 4 percent of such sales price or the amount of tax as collected by that person from purchasers having their purchases delivered in this state, whichever is greater.

(2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the purchaser at retail. The tax imposed by this subsection shall be subject to the credit otherwise granted by this article for like taxes previously paid in another state. This subsection shall not be construed to require a duplication in the payment of the tax.

(d)(1) Every person to whom tangible personal property in the state is leased or rented shall be liable for a tax on the lease or rental at the rate of 4 percent of the sales price. The tax shall be paid to the person who leases or rents the property by the person to whom the property is leased or rented. A person who leases or rents property to others as a dealer under this article shall remit the tax to the commissioner as provided in this article. When received by the commissioner, the tax shall be a credit against the tax imposed on the person who leases or rents the property to others. Every person who leases or rents tangible personal property in this state to others shall be a dealer and shall be liable for a tax on the lease or rental at the rate of 4 percent of the sales price, or the amount of taxes collected by him from persons to whom he leases or rents tangible personal property, whichever is greater.

(2) No lease or rental shall be taxable to the person who leases or rents tangible property to another which is not taxable to the person to whom the property is leased or rented.

(3) The lessee of both taxable and exempt property in this state under a single lease agreement containing a lease period of ten years or more shall have the option to discharge in full all sales and use taxes imposed by this article relating to the tangible personal property by paying in a lump sum 4 percent of the fair market value of the tangible personal property at the date of inception of the lease agreement in the same manner and under the same conditions applicable to sales of the tangible personal property.

(e) Upon the first instance of use within this state of tangible personal property leased or rented outside this state, the person to whom the property is leased or rented shall be a dealer and shall be liable for a tax at the rate of 4 percent of the sales price paid to the person who leased or rented the property, subject to the credit authorized for like taxes previously paid in another state.

(e.1)(1) Every person who leases, as lessor, or rents tangible personal property outside this state for use within this state shall be liable for

a tax at the rate of 4 percent of the sales price paid for that lease or rental if that person is a dealer, as defined in Code Section 48-8-2, and title to that property remains in that person. It shall be prima-facie evidence that such property is to be used within this state if that property is delivered in this state to the lessee or renter of such property, or to the agent of either. The tax shall be paid by the lessee or renter and payment of the tax shall be made to the lessor or person receiving rental payments for that property, which person shall be the dealer for purposes of this article. The dealer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the dealer. Every person who is a dealer, as defined in Code Section 48-8-2, and who leases or rents tangible personal property outside this state to be delivered in this state to the lessee, renter, or agent of either shall be a dealer and shall be liable as such for a tax on the lease or rental at the rate of 4 percent of the sales price from such leases or rentals or the amount of taxes collected by that dealer for leases or rentals of tangible personal property delivered in this state, whichever is greater.

(2) No lease or rental shall be taxable to the dealer which is not taxable to the lessee or renter. The tax imposed by this subsection shall be subject to the credit granted by this article for like taxes previously paid in another state. This subsection shall not be construed to require a duplication in the payment of the tax.

(f)(1) Every person purchasing or receiving any service within this state, the purchase of which is a retail sale, shall be liable for tax on the purchase at the rate of 4 percent of the sales price made for the purchase. The tax shall be paid by the person purchasing or receiving the service to the person furnishing the service. The person furnishing the service, as a dealer under this article, shall remit the tax to the commissioner as provided in this article; and, when received by the commissioner, the tax shall be a credit against the tax imposed on the person furnishing the service. Every person furnishing a service, the purchase of which is a retail sale, shall be a dealer and shall be liable for a tax on the sale at the rate of 4 percent of the sales price made for furnishing the service, or the amount of taxes collected by him from the person to whom the service is furnished, whichever is greater.

(2) No sale of services shall be taxable to the person furnishing the service which is not taxable to the purchaser of the service.

(3)(A) Assessments of the state sales and use tax under this article on the charges described in subparagraph (H) of paragraph (31) of Code Section 48-8-2 shall accrue commencing on July 1, 2011; provided, however, that collection of such state sales and use tax

upon such charges shall not commence until the commissioner of community health has provided written notification to the state revenue commissioner that until such time as the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services has approved the state plan amendments described in subsection (b) of Code Section 31-8-152.1. In the event that such approval is not obtained or is reversed, or that the federal financial participation is not available with respect to revenues derived from such state sales and use tax, all accrued amounts of such tax shall lapse, and the charges described in subparagraph (H) of paragraph (31) of Code Section 48-8-2 shall not constitute sales for purposes of this article.

(B)(i) The charges for services described in subparagraph (H) of paragraph (31) of Code Section 48-8-2 shall be subject to state sales and use tax only and shall in no event be subject to any local sales and use tax.

(ii) For purposes of this subparagraph, the term "local sales and use tax" means any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to any article of this chapter other than Article 1 of this chapter.

(C) This paragraph shall stand automatically repealed on the date the state treasurer certifies in writing to the commissioner that federal matching funds have ceased to be available or on June 30, 2014, whichever date is earlier.

(g) Whenever a purchaser of tangible personal property under subsection (b) or (c.1) of this Code section, a lessee or renter of the property under subsection (d) or (e.1) of this Code section, or a purchaser of taxable services under subsection (f) of this Code section does not pay the tax imposed upon him or her to the retailer, lessor, or dealer who is involved in the taxable transaction, the purchaser, lessee, or renter shall be a dealer himself or herself and the commissioner, whenever he or she has reason to believe that a purchaser or lessee has not so paid the tax, may assess and collect the tax directly against and from the purchaser, lessee, or renter, unless the purchaser, lessee, or renter shows that the retailer, lessor, or dealer who is involved in the transaction has nevertheless remitted to the commissioner the tax imposed on the transaction. If payment is received directly from the purchaser, it shall not be collected a second time from the retailer, lessor, or dealer who is involved.

(h) The tax imposed by this Code section shall be collected from the dealer and paid at the time and in the manner provided in this article. Any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax imposed on the sales price of retail sales of the business at the rate specified when proper books are kept showing separately the gross proceeds of sales for each business. If the records are not kept separately, the tax shall be paid as a retailer or dealer on the gross sales of the business. For the purpose of this Code section, all sales through any one vending machine shall be treated as a single sale. The gross proceeds for reporting vending sales shall be treated as if the tax is included in the sale and the taxable proceeds shall be net of the tax included in the sale.

(i) The tax levied by this Code section is in addition to all other taxes, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes levied.

(j) In the event any distributor licensed under Chapter 9 of this title purchases any motor fuel on which the prepaid state tax or prepaid local tax or both have been imposed pursuant to this Code section and resells the same to a governmental entity that is totally or partially exempt from such tax under paragraph (1) of Code Section 48-8-3, such distributor shall be entitled to either a credit or refund. The amount of the credit or refund shall be the prepaid state tax or prepaid local tax or both rates for which such governmental entity is exempt multiplied by the gallons of motor fuel purchased for its exclusive use. To be eligible for the credit or refund, the distributor shall reduce the amount such distributor charges for the fuel sold to such governmental entity by an amount equal to the tax from which such governmental entity is exempt. Should a distributor have a liability under this Code section, the distributor may elect to take a credit for those sales against such liability.

(k) The prepaid local tax shall be imposed at the time tax is imposed under subparagraph (b)(2)(B) of Code Section 48-9-14. (Ga. L. 1951, p. 360, § 2; Ga. L. 1960, p. 153, § 1; Ga. L. 1967, p. 284, § 1; Code 1933, § 91A-4502, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 24; Ga. L. 1989, p. 62, § 5; Ga. L. 1990, p. 1243, §§ 2-4; Ga. L. 1992, p. 6, § 48; Ga. L. 1996, p. 1635, § 1; Ga. L. 1998, p. 602, § 4; Ga. L. 2001, p. 4, § 48; Ga. L. 2001, p. 984, § 17; Ga. L. 2007, p. 309, § 2/HB 219; Ga. L. 2010, p. 662, § 7/HB 1221; Ga. L. 2011, p. 674, § 1-4/HB 117; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2011 amendment, effective July 1, 2011, added paragraph (f)(3).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraphs (c.1)(1) and (e.1)(1).

Editor's notes. — Ga. L. 1989, p. 62, § 1, not codified by the General Assembly, provides: "It is the intention of the General Assembly that the revenue generated by the increase in the state sales and use tax provided for in this Act shall be used

in part for general governmental purposes and in part for grants of funds to political subdivisions of the state to provide ad valorem tax relief. The General Assembly recognizes and intends that all such revenue is to be paid into the general fund of the state treasury and subject to the normal budgetary and appropriations process, but it is the intention of the General Assembly that a portion of such revenue shall be appropriated to fund such grants for ad valorem tax relief purposes."

Ga. L. 1989, p. 62, § 14, not codified by the General Assembly, provides: "In the event that any other Act of the 1989 General Assembly amends Article 3 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, it is the intention of the General Assembly that the provisions of such other Act control over the provisions of this Act, except that it is the intention of the General Assembly that the increase in the rate of state sales and use taxation provided for in this Act shall not operate to decrease the maximum rate of taxes which may be imposed by local governments under said article as now existing or as it may be amended; and for this limited purpose, the provisions of this Act and particularly of this statement of intent shall control over the provisions of such other Act, notwithstanding any limitation on maximum aggregate amounts of taxation which may be contained in such other Act."

Ga. L. 1989, p. 62, § 15, not codified by the General Assembly, provides: "(a) As used in this section, the term 'building and construction materials' means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into

construction work pursuant to a bona fide written construction contract.

"(b) The increased rate of state sales and use taxation provided for in this Act shall not apply with respect to the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to April 1, 1989, and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to April 1, 1989; provided, however, that any such sale or use shall remain fully taxable at the prior rate of taxation.

"(c) With respect to services which are regularly billed on a monthly basis, the increased rate of state sales and use taxation provided for in this Act shall apply to services billed on or after April 1, 1989; provided, however, that any such services billed prior to such date shall remain fully taxable at the prior rate of taxation."

Law reviews. — For article surveying Georgia cases in the area of state and local taxation from June 1979 through May 1980, see 32 Mercer L. Rev. 203 (1980). For article "Clarification Needed in Georgia Retail Sales and Use Tax Statute," see 41 Mercer L. Rev. 1 (1989). For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 294 (2001).

For comment on *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753, 87 S. Ct. 1389, 18 L. Ed. 2d 505 (1967), as to constitutionality of imposing state use taxes on out-of-state mail order form, see 19 Mercer L. Rev. 257 (1968).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

INTERSTATE TRANSACTIONS

LIABILITY FOR COLLECTION AND PAYMENT

General Consideration

“Moment of sale” or “moment of purchase” test should be applied to sales and use tax computations, respectively. *Rich’s, Inc. v. Blackmon*, 133 Ga. App. 665, 211 S.E.2d 916 (1975).

Substance of a transaction, rather than the appellation chosen by the parties, controls its tax treatment. *Footpress Corp. v. Strickland*, 242 Ga. 686, 251 S.E.2d 278 (1978).

Purpose of Ga. L. 1951, p. 360, § 2 differs from that of Ga. L. 1951, p. 360, § 8. *Law Lincoln Mercury, Inc. v. Strickland*, 246 Ga. 237, 271 S.E.2d 152 (1980).

Ga. L. 1951, p. 360, § 2 and Ga. L. 1951, p. 360, § 8 operate to tax sales made under different circumstances. *Law Lincoln Mercury, Inc. v. Strickland*, 246 Ga. 237, 271 S.E.2d 152 (1980).

Tax on personal use followed by tax on sale to customer permissible. — Tax of retail purchaser who makes any use of property other than retention, demonstration, or display while holding the property for sale in the regular course of business, under Ga. L. 1951, p. 360, and subsequent tax if that purchaser thereafter sells the property to a consuming purchaser, involve two distinct sales transactions which are independent taxable events, and are not violative of the prohibition against duplication of taxes under Ga. L. 1951, p. 360. *Law Lincoln Mercury, Inc. v. Strickland*, 246 Ga. 237, 271 S.E.2d 152 (1980).

Article does not provide for taxation of real property. — No provision is made in Ga. L. 1951, p. 360 for a tax upon sales of real property as elsewhere defined and distinguished from personal property by the law of this state. *State v. Dyson*, 89 Ga. App. 791, 81 S.E.2d 217 (1954).

Bracket system illegal when overpayment results. — Bracket system which requires the payment or collection of more tax than that contemplated by the General Assembly, that is, to collect a whole cent of tax when a fractional part of a cent of tax (by mathematical calculation) is involved, would exceed the authority granted. *Hawes v. Phillips*, 122 Ga. App. 714, 178 S.E.2d 759 (1970).

Attachment and priority of lien for sales and use tax. — Lien and the lien’s rank is provided for the state for sales and use taxes. Such lien attaches on the day on which the dealer is required to make a return and remittance to the commissioner, and is declared to be superior to all other liens. *State v. Atlanta Provision Co.*, 90 Ga. App. 147, 82 S.E.2d 145 (1954).

Effect of failure to record fi. fa. for sales taxes. — Recording of the fi. fa. issued by the commissioner on the general execution docket is not a condition precedent to attachment of the lien for sales taxes, and the only effect of a failure to record the lien is that as against innocent purchasers the lien will be lost. *State v. Atlanta Provision Co.*, 90 Ga. App. 147, 82 S.E.2d 145 (1954).

When maintenance charges not within meaning of “gross lease or rental proceeds”. — When maintenance charges are separately stated, are based upon maintenance costs, and may be changed after the initial year independently of the rental or lease charge, such charges are not within the meaning of “gross lease or rental proceeds” as set forth in O.C.G.A. § 48-8-30. *Strickland v. Sperry Rand Corp.*, 248 Ga. 535, 285 S.E.2d 1 (1981).

Taxation of separately stated maintenance charges. — Separately stated maintenance charges which are included in a lease transaction on tangible personal property are not taxable as part of the gross lease or rental proceeds. *Strickland v. Sperry Rand Corp.*, 248 Ga. 535, 285 S.E.2d 1 (1981).

Standing to claim tax refund. — Electrical membership corporation lacked direct standing to pursue a claim for a refund of sales tax on behalf of its members/patrons, pursuant to O.C.G.A. § 48-2-35(b)(1) (now (c)(1)), as it was not a “taxpayer” within O.C.G.A. § 48-2-35(b)(4) (now (c)(4)), for purposes of bringing an action for a tax refund when it did not bear the burden of the tax because the tax was passed on to its members/patrons; one purpose of the EMC was to furnish electrical energy and service to its members, pursuant to O.C.G.A. § 46-3-200(1), and the sale of electricity required a retail sales tax paid to the EMC, which was passed onto the Georgia Commis-

General Consideration (Cont'd)

sioner of Revenue, pursuant to O.C.G.A. § 48-8-30(a). *Sawnee Elec. Mbrshp. Corp. v. Ga. Dep't of Revenue*, 279 Ga. 22, 608 S.E.2d 611 (2005).

Trial court did not err in dismissing a bank's complaint alleging that the bank was entitled to a refund for sales tax paid under the General Refund Statute, O.C.G.A. § 48-2-35, because the bank was not a taxpayer entitled to a refund under § 48-2-35 since the bank was simply a third-party lender that contracted to advance the money for the consumer, and ultimately the merchant, to meet the merchant's obligations to pay the sales tax; the bank's recourse was against the consumer who defaulted on the debt or possibly through any provisions in the credit card program contracts assigning responsibility for bad debts among the various parties. *Citibank (South Dakota), N.A. v. Graham*, 315 Ga. App. 120, 726 S.E.2d 617 (2012), cert. denied, No. S12C1281, 2012 Ga. LEXIS 1017 (Ga. 2012).

Cited in *Bagley v. State*, 161 Ga. App. 688, 288 S.E.2d 332 (1982); *Adrian Hous. Corp. v. Collins*, 253 Ga. 263, 319 S.E.2d 852 (1984); *Outdoor Displays Welding & Fabrication, Inc. v. United States Enters., Inc.*, 84 Bankr. 260 (Bankr. S.D. Ga. 1988); *GMAC v. Jackson*, 247 Ga. App. 141, 542 S.E.2d 538 (2000); *Aircraft Spruce & Specialty Co. v. Fayette County Bd. of Tax Assessors*, 294 Ga. App. 241, 669 S.E.2d 417 (2008).

Interstate Transactions

Nondiscriminatory use tax on goods transported in interstate commerce not a violation of commerce clause. — Nondiscriminatory tax on goods transported in interstate commerce, which is imposed under this section not upon the operations of interstate commerce but upon the privilege of use after commerce has ended, is not a regulation contrary to the commerce clause of the United States Constitution. *Independent Publishing Co. v. Hawes*, 119 Ga. App. 858, 168 S.E.2d 904 (1969).

Purpose of use tax on property purchased outside the state. — To preclude avoidance of the sales tax when enforce-

ment directly against the retail sale is not practicable, this section imposes a complementary use tax on property purchased outside the state. *Independent Publishing Co. v. Hawes*, 119 Ga. App. 858, 168 S.E.2d 904 (1969).

Intent as to credit for like taxable incidents occurring in other states. — Intent in Georgia is to allow credit for a like taxable incident which first occurs in another state and to collect a tax based on a taxable incident in Georgia occurring thereafter, but only to the extent of the difference between a lesser like tax previously paid and the Georgia tax, and only if the other state has a reciprocal law. *Hawes v. National Serv. Indus., Inc.*, 121 Ga. App. 775, 175 S.E.2d 34 (1970), aff'd, 227 Ga. 221, 179 S.E.2d 765 (1971).

Use tax on out-of-state purchase by resident purchaser upon which sales tax not collected. — Law imposes a tax on a Georgia purchaser who purchases personal property outside the state from an out-of-state seller, when the seller is not required to collect and remit a sales tax on the purchase to this state. *Law Lincoln Mercury, Inc. v. Strickland*, 246 Ga. 237, 271 S.E.2d 152 (1980).

Taxation of goods purchased outside state by nonresident for delivery in state. — When a nonresident taxpayer purchased telephone directories from nonresident printers for delivery by the printers within this state pursuant to the taxpayer's contracts with certain telephone companies in this state, the taxpayer is considered a consumer within the meaning of Ga. L. 1951, p. 360 (see O.C.G.A. Art. 1, Ch. 8, T. 48) and is not relieved of liability from the tax by the fact that the directories were purchased outside the state nor by the fact that the directories were shipped by the printers directly to the telephone companies. *L.M. Berry & Co. v. Blackmon*, 129 Ga. App. 347, 199 S.E.2d 610 (1973), aff'd, 231 Ga. 659, 203 S.E.2d 520 (1974).

Direct mail advertising materials purchased by a corporation outside the state for distribution to residents within the state were subject to use tax. *Collins v. J.C. Penney Co.*, 218 Ga. App. 405, 461 S.E.2d 582 (1995).

Preprinted newspaper advertising inserts purchased by a corporation did

not become a component or integral part of the newspaper through which the inserts were distributed and were subject to use tax. *Collins v. J.C. Penney Co.*, 218 Ga. App. 405, 461 S.E.2d 582 (1995).

Liability for Collection and Payment

Order of liability for sales tax. — Liability for sales tax is imposed primarily on the purchaser with secondary liability on the seller to collect and remit the tax. *Blackmon v. Nichols*, 494 F.2d 1179 (5th Cir. 1974).

Ultimate liability for use tax is upon purchaser, not seller, who is merely the state's collecting agent. For this service the seller is compensated, provided the taxes due are not delinquent at the time of payment. *Independent Publishing Co. v. Hawes*, 119 Ga. App. 858, 168 S.E.2d 904 (1969).

Intent is that seller be responsible for collection. — Although ultimate liability for payment of sales and use tax falls upon the purchaser, and although in the event of failure to pay such tax the commissioner may proceed against either purchaser or seller, it is nevertheless the intent of the law that the seller or dealer is the entity responsible for collecting and forwarding the tax, and the seller's failure to do so subjects the seller to both civil and criminal penalties in addition to the tax liability. *Dittler Bros. v. AMR Int'l, Inc.*, 142 Ga. App. 570, 236 S.E.2d 544 (1977).

Authority to proceed against purchaser is permissive, not mandatory. — Dealer liability for the tax is not altered because the state may also proceed against the purchaser for the tax. The law, in permissive and not mandatory language, provides that when the purchaser

has not paid the sales tax, the commissioner may proceed directly against the purchaser to recover the tax. *Nimmer v. Strickland*, 242 Ga. 430, 249 S.E.2d 233 (1978).

Party designated as "owner" in lease contract liable for collection and remittance. — If one who is designated in a written contract as the "owner" of described personal property grants to another designated as "user" the right to possess and use described personal property in consideration for a specified sum of money, which sum is designated in such contract as rental and, when by the terms of such contract the personalty remains the property of the owner and is to be returned to the owner at the termination of the period of the lease contract, the one designated therein as the "owner" is liable for collection and remittance of the sales tax imposed thereby on the gross proceeds received under such lease contract. *Undercoffer v. Whiteway Neon Ad, Inc.*, 114 Ga. App. 644, 152 S.E.2d 616 (1966).

Purchaser has right to hearing regarding assessment for sales tax. — Purchaser who has paid the sales tax to the seller has the right to prove such payment at a hearing in which the purchaser is contesting the assessment against the purchaser. *Gainesville-Hall County Economic Opportunity Org., Inc. v. Blackmon*, 233 Ga. 507, 212 S.E.2d 341 (1975).

Proof of remittance at hearing. — At a hearing contesting a tax assessment, the purchaser has a right to show that the seller remitted the tax on the transaction to the state, and this is a question of fact. *Gainesville-Hall County Economic Opportunity Org., Inc. v. Blackmon*, 233 Ga. 507, 212 S.E.2d 341 (1975).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

- GENERAL CONSIDERATION
- ENTITIES AND TRANSACTIONS SUBJECT TO TAX
- AMOUNT SUBJECT TO TAX
- INTERSTATE TRANSACTIONS
- FIRST USE IN STATE OF PROPERTY PURCHASED OUTSIDE STATE

General Consideration

Purpose of use tax. — Intent of the General Assembly was not to levy a primary use tax from which would be exempt transactions involving sales at retail in this state, upon which sales tax has been collected. Rather, the use tax supplements the sales tax and is intended as a collection device. *Williams v. Suwannee Longleaf Mfg. Co.*, 97 Ga. App. 431, 103 S.E.2d 123 (1958), *aff'd*, 214 Ga. 613, 106 S.E.2d 797 (1959).

Purpose of taxes on use and rentals. — Rentals tax imposed by Ga. L. 1951, p. 360 is, like the use tax imposed by Ga. L. 1951, p. 360, a supplementary or compensating tax designed to deter sales tax avoidance through renting instead of selling tangible personal property and to equalize the tax treatment of persons engaged in the business of renting with those engaged in selling tangible personal property. It treats the rental of tangible personal property as a *pro tanto* sale, that is, a retail sale to the extent of the rent and for the term of the rental. 1958-59 Op. Att'y Gen. p. 382.

Legislative intent as to distinction between services and leases or rentals. — Analytically, if inquiry be pursued to the limit of its logic, it might be said that every lease or rental involves some element of service, while every service involves some utilization of personal property; but here, as in all cases, the law does not deal in absolutes for the General Assembly has, by employing two concepts differing in their consequences, manifested the legislature's intention that a line is to be drawn somewhere separating the areas of taxability and nontaxability. 1963-65 Op. Att'y Gen. p. 172.

Taxation of representative from foreign country. — Representative from foreign country is not exempt from either Ga. L. 1951, p. 360 or O.C.G.A. Ch. 92-14. 1962 Op. Att'y Gen. p. 514.

Building and construction materials. — Under Ga. L. 1989, p. 62, § 15(a) and (b), the increased state sales and use tax rate does not apply to the sale or use of certain building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid and the bid was submit-

ted prior to April 1, 1989, even though the contract is awarded or entered into after April 1, 1989. 1989 Op. Att'y Gen. No. U89-5.

Entities and Transactions Subject to Tax

Housing authorities are not exempt from payment of state sales taxes upon purchases made by those authorities. 1952-53 Op. Att'y Gen. p. 476.

Agricultural commodity commissions are subject to taxes imposed under Ga. L. 1951, p. 360. 1975 Op. Att'y Gen. No. 75-136.

Taxation of Georgia Prison Store. — Georgia Prison Store is a dealer under Ga. L. 1951, p. 360 and is required to register, collect, and remit sales tax on all the store's retail sales. 1974 Op. Att'y Gen. No. 74-29.

Inmates in Georgia prisons are neither exempt nor constitutionally protected from tax on purchases of items from inmate stores. 1974 Op. Att'y Gen. No. 74-29.

Automobile dealers furnishing vehicles for high school driver education classes are exempt from sales tax thereon. 1952-53 Op. Att'y Gen. p. 473.

Taxation of sales by area vocational-technical schools to students. — Area vocational-technical schools, operated by local units of school administration, engaged in selling books and other miscellaneous materials to their students on a nonprofit basis, must collect and remit sales taxes on sales made by them. Upon failure to make such collections and remittances, the local units are liable themselves for the tax. 1973 Op. Att'y Gen. No. 73-83.

Sales by executors and administrators are subject to payment of the state sales tax. 1952-53 Op. Att'y Gen. p. 474.

Drying and cleaning of peanuts is a service which is not taxable under Ga. L. 1951, p. 360. 1962 Op. Att'y Gen. p. 561.

Amount Subject to Tax

Royalty payments. — Sales tax is only based upon gross proceeds from rentals and is not imposed upon the payment

of royalties. 1954-56 Op. Att'y Gen. p. 845.

Taxes imposed prior to retail sale included in base for computing sales tax. — If a tax is imposed on an event prior to a retail sale, that tax must be included in the base on which the sales tax is computed. 1971 Op. Att'y Gen. No. U71-121.

Sales tax paid on federal excise tax if not listed separately. — Sales tax is not paid on federal excise tax when purchasing a new car unless federal excise tax is not listed separately, but simply included in the gross price of the car. 1954-56 Op. Att'y Gen. p. 852.

Other excise taxes on beer included in sales price. — Sales of beer are subject to payment of the state sales tax, but such tax is to be computed on the actual sales price excluding other excise taxes imposed thereon. 1952-53 Op. Att'y Gen. p. 472.

Use tax on property furnished to contractor by government. — When a government contractor under a fixed-price type maintenance, overhaul, and modification contract uses up and consumes government furnished property in performing a contract, although having previously purchased such property as agent for the government, the contractor becomes liable for use tax based upon the fair market value of the property so used up and consumed. 1962 Op. Att'y Gen. p. 547.

Interstate Transactions

Sales tax applies when title passes in this state. — Sales tax applies to the purchase of property by an out-of-state purchaser if the title passes in this state, even if the property is immediately removed from the state. 1971 Op. Att'y Gen. No. U71-92.

Tax when title passes in another state to purchasers in this state. — When title passes in another state to a purchaser in this state, and the items are distributed gratuitously to persons within this state, the sales tax would not apply, but use tax should be collected. 1960-61 Op. Att'y Gen. p. 554.

Sale and delivery of property in this state is subject to this state's sales tax, even though the purchaser is a nonresi-

dent. 1970 Op. Att'y Gen. No. U70-63.

Rental contracts which are completed fully within this state are subject to Ga. L. 1951, p. 360, notwithstanding the fact that physical possession of the rented property is delivered outside this state. 1969 Op. Att'y Gen. No. 69-146.

Tax situs for lease transaction is where lessee first takes exclusive control. — Situs of the taxable event under Ga. L. 1951, p. 360 is the place where the tangible personal property is first put under the exclusive control of the renter for use under the rental agreement, this being considered as the equivalent of delivery were the transaction a sale. Where this taxable event takes place within this state the dealer who rents is subject to the tax imposed by Ga. L. 1951, p. 360, irrespective of the fact that the rented property may be used in interstate commerce, and where this taxable event takes place outside this state, then, upon the property being brought into this state, whether in interstate commerce or not, the tax imposed by Ga. L. 1951, p. 360 applies against the renter as if the tangible personal property had been originally rented within this state, subject to the credit for like taxes paid elsewhere. 1958-59 Op. Att'y Gen. p. 382.

Store in this state may not require out-of-state customer to pay state sales tax on goods ordered shipped to such customer. 1952-53 Op. Att'y Gen. p. 479.

Tax on lease of trucks for use outside state. — Any person or company engaged in the business of leasing trucks in this state has an obligation to pay tax on the gross proceeds and to pass the tax on to the lessee as an additional charge. The fact that a leased truck may be used outside this state is immaterial so long as there is any use within this state. 1954-56 Op. Att'y Gen. p. 845.

Tax on use of machinery belonging to nonresident corporation. — Use of machinery by a Georgia corporation, which machinery belongs to a nonresident corporation and for which the Georgia corporation pays a royalty, is subject to use tax. 1954-56 Op. Att'y Gen. p. 846.

Property delivered to out-of-state location by buyer. — When property is

Interstate Transactions (Cont'd)

delivered pursuant to sales to out-of-state locations by a means of transportation which is leased or rented by the buyer, the sales occur in this state and are taxable under Ga. L. 1951, p. 360. 1969 Op. Att'y Gen. No. 69-146.

Use tax on advertising materials purchased outside state. — Manufacturer who buys advertising materials outside state, ships the materials directly to dealers, at no cost to dealers, with dealers using the materials to promote local sales, is liable for use tax on such materials. 1962 Op. Att'y Gen. p. 556.

Dual operator liable for tax on property consumed in performance of contract. — Since a dual operator, or person who, as a retail dealer, sells tangible personal property in performing contracts, is a consumer of the property used in performing contracts, irrespective of where the contracts may be performed,

the person would owe this state a sales tax with respect to the purchase of such property in this state and would owe this state a use tax with respect to such property purchased outside this state and then brought to rest in this state. 1968 Op. Att'y Gen. No. 68-96.

First Use in State of Property Purchased Outside State

Meaning of "fair market value" of imported advertising materials. — For purposes of O.C.G.A. § 48-8-30(c), fair market value of advertising materials imported by department stores into Georgia is that price that a willing buyer with similar advertising needs would pay to purchase like advertising from a willing seller. In absence of evidence to the contrary, fair market value of these advertising materials at time of their first use within Georgia should be taken to be the materials' purchase price. 1981 Op. Att'y Gen. No. 81-93.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, §§ 34 et seq., 41 et seq., 50 et seq., 137, 166, 205 et seq.

C.J.S. — 84 C.J.S., Taxation, §§ 20, 162 et seq.

ALR. — Computation of sales tax, 107 ALR 267; 135 ALR 1485; 150 ALR 1311.

Who is liable for tax in case of conditional sale, or option for purchase, of personal property, 116 ALR 325.

Right as between dealer or manufacturer and taxing authorities in respect of taxes and license fees illegally received or collected, 119 ALR 542.

Sale of article intended for consumption or use by customers or patrons of the buyer on the latter's premises as retail sale within sales tax law, 157 ALR 557.

Applicability of sales tax to judicial or bankruptcy sales, 27 ALR2d 1219.

Use tax on property purchased by non-resident in another state, 41 ALR2d 535.

Federal retail luxury or other excise tax as includable in amount on which state sales or use tax is computed, 43 ALR2d 862.

Validity and construction of provision exempting from use tax property which is

"not readily obtainable" in the state, 88 ALR2d 811.

Sales by automatic vending machine as subject to retail sales tax, 91 ALR2d 1138.

Sales and use taxes: exemption of casual, isolated, or occasional sales, 42 ALR3d 292.

Sales or use tax on motor vehicle purchased out of state, 45 ALR3d 1270.

Applicability of sales tax to "tips" or service charges added in lieu of tips, 73 ALR3d 1226.

Reusable soft drink bottles as subject to sales or use taxes, 97 ALR3d 1205.

Sales and use taxes on leased tangible personal property, 2 ALR4th 859.

Transportation, freight, mailing, or handling charges billed separately to purchaser of goods as subject to sales or use tax, 2 ALR4th 1124.

Eyeglasses or other optical accessories as subject to sales or use tax, 14 ALR4th 1370.

Sales and use taxes on sale or lease of mailing or customer list, 80 ALR4th 1126.

Computer software or printout transactions as subject to state sales or use tax, 36 ALR5th 133.

Sufficient nexus for state to require foreign entity to collect state's compensating, sales, or use tax — post-complete auto transit cases, 71 ALR5th 671.

48-8-31. Tax computation to be carried to third decimal place; rounding.

Tax computation must be carried to the third decimal place, and the tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. (Ga. L. 1951, p. 360, § 22; Code 1933, § 91A-4531, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 40; Ga. L. 2010, p. 662, § 8/HB 1221.)

JUDICIAL DECISIONS

Bracket system valid when no more than 3 percent tax on fractional part of dollar. — Bracket system which does not require the payment and collection of more than the necessary amount of coinage required to pay and collect the 3 percent levied on sales of a fractional part of a dollar is not contrary to the legislative grant of authority to the commissioner. *Hawes v. Phillips*, 122 Ga. App. 714, 178 S.E.2d 759 (1970).

Bracket system illegal if overpayment results. — Bracket system which requires the payment or collection of more tax than that contemplated by the General Assembly, that is, to collect a whole cent of tax where a fractional part of a cent of tax (by mathematical calculation) is involved, would exceed the authority granted. *Hawes v. Phillips*, 122 Ga. App. 714, 178 S.E.2d 759 (1970).

48-8-32. Tax collectable from dealers; rate for retail sales price and purchase price.

The tax at the rate of 4 percent of the retail sales price at the time of sale or 4 percent of the purchase price at the time of purchase, as the case may be, shall be collectable from all persons engaged as dealers in the sale at retail, or in the use, consumption, distribution, or storage for use or consumption in this state of tangible personal property. (Ga. L. 1951, p. 360, § 4; Code 1933, § 91A-4504, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 62, § 6; Ga. L. 2010, p. 662, § 9/HB 1221.)

JUDICIAL DECISIONS

Dealer liable for tax whether collected by the dealer or not. — Every person making a sale of tangible personal property at retail in the state is required by Ga. L. 1951, p. 360 to collect and remit the tax to the commissioner, and is a dealer under Ga. L. 1951, p. 360, and is liable for the tax as of the moment of sale,

whether the dealer collects the tax or not. *Davis v. Chilivis*, 142 Ga. App. 679, 237 S.E.2d 2 (1977).

“Moment of sale” or “moment of purchase” test should be applied to sales and use tax computations, respectively. *Rich’s, Inc. v. Blackmon*, 133 Ga. App. 665, 211 S.E.2d 916 (1975).

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Use tax on property purchased out of state. — Automobile purchased by taxpayer out of state and brought into this

state for use herein is subject to use tax under this section. 1954-56 Op. Att'y Gen. p. 862.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, §§ 107, 109, 181, 182.

manufacturer and taxing authorities in respect of taxes and license fees illegally received or collected, 119 ALR 542.

ALR. — Right as between dealer or

48-8-33. Collection of tax by dealer as agent of state notwithstanding constitutional or other exemptions.

Notwithstanding any exemption from taxes which a dealer enjoys under the Constitution or laws of this state, any other state, or the United States, the dealer shall collect the tax imposed by this article from the purchaser or consumer and shall pay the tax over to the commissioner as provided by law. (Ga. L. 1951, p. 360, § 12; Ga. L. 1960, p. 153, § 4; Code 1933, § 91A-4511, enacted by Ga. L. 1978, p. 309, § 2.)

JUDICIAL DECISIONS

Dealer's relationship with purchaser and state. — This section is merely descriptive of the relationship between the dealer and purchaser. The dealer is an agent for the state in the collection of the tax imposed upon the dealer and passed on to the purchaser. For reporting, accounting, and payment of the tax the dealer is a taxpayer with the right of the state in the case of the dealer's

default to proceed against the dealer, not as an ordinary agent, but as a taxpayer. This section is in harmony, and not in conflict, with other provisions of Ga. L. 1951, p. 360. *Williams v. Bear's Den, Inc.*, 214 Ga. 240, 104 S.E.2d 230 (1958).

Cited in *International Computer Group, Inc. v. Data Gen. Corp.*, 159 Ga. App. 169, 283 S.E.2d 12 (1981).

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Municipal corporations are not exempt from collecting sales taxes when municipal corporations engage in the business of operating a public swimming pool and charging admission. 1954-56 Op. Att'y Gen. p. 859.

Operators of concessions located within a park should charge, collect, and remit the 3 percent sales tax on the sales price of tangible personal property and services sold by those operators. 1954-56 Op. Att'y Gen. p. 858.

Area vocational-technical schools, operated by local units of school adminis-

tration, engaged in selling books and other miscellaneous materials to their students on a nonprofit basis, must collect and remit sales taxes on sales made by them. Upon failure to make such collections and remittances, the local units are liable themselves for the tax. 1973 Op. Att'y Gen. No. 73-83.

Sales by executors and administrators are subject to payment of the state sales tax. 1952-53 Op. Att'y Gen. p. 474.

Stone Mountain Memorial Association must collect tax. — As to sales made by the Stone Mountain Memorial

Association, sales tax must be collected by the association from its purchasers and remitted to the state. 1971 Op. Att'y Gen. No. 71-139.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 208 et seq.

48-8-34. Collection of tax from purchaser by dealer at time of sale; payment of tax on imports; use, consumption, distribution, or storage equivalent to sale at retail; no duplication of tax.

(a) Every dealer making sales within or outside the state of tangible personal property for distribution, storage, use, or other consumption in this state shall collect the tax imposed by this article from the purchaser at the time of sale.

(b) On all tangible personal property imported or caused to be imported by any dealer from another state or foreign country and used by him, the dealer shall pay the tax imposed by this article as if the property had been sold at retail for use or consumption in this state. For the purposes of this article, the use, consumption, distribution, or storage for use or consumption in this state of tangible personal property shall each be equivalent to a sale at retail and the tax shall be immediately levied and collected on each such sale in the manner provided in this article. There shall be no duplication of the tax in any event as a result of this subsection. (Ga. L. 1951, p. 360, § 4; Code 1933, § 91A-4505, enacted by Ga. L. 1978, p. 309, § 2.)

JUDICIAL DECISIONS

Purpose is to equalize taxes, sales and use of property wherever purchased. — Effect of this section is to require, as far as practicable, that the application of the tax upon use of tangible personal property purchased outside the state shall be consistent with the application of the tax upon sales of tangible personal property at retail inside the state. *Colonial Pipeline Co. v. Undercofler*, 115 Ga. App. 58, 153 S.E.2d 592 (1967).

Intent is that seller be responsible for collection although purchaser also liable. — Although ultimate liability for payment of sales and use tax falls upon the purchaser, and although in the event of failure to pay, the commissioner may proceed against either the purchaser or seller, it is nevertheless the intent of the

law that the seller or dealer is the entity responsible for collecting and forwarding the tax, and the dealer's failure to do so subjects the dealer to both civil and criminal penalties in addition to the tax liability. *Dittler Bros. v. AMR Int'l, Inc.*, 142 Ga. App. 570, 236 S.E.2d 544 (1977).

Taxation of property purchased in this state for future shipment to other states. — Tangible personal property purchased from sellers in this state and stored by the taxpayer in this state for future shipment to other states for ultimate use are taxable and are not excluded from tax, whether or not the property is at all times designated for future shipment outside the state. *National Serv. Indus., Inc. v. Hawes*, 227 Ga. 221, 179 S.E.2d 765 (1971).

Cited in Citibank (South Dakota), N.A. 617 (2012), cert. denied, No. S12C1281, v. Graham, 315 Ga. App. 120, 726 S.E.2d 2012 Ga. LEXIS 1017 (Ga. 2012).

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Purchases in state of property to be used or consumed exclusively outside state. — Construing this section and Ga. L. 1951, p. 360, § 4, purchases made in this state of tangible personal property to be used or consumed or stored exclusively outside the state are not subject to the tax imposed by Ga. L. 1951, p. 360, and dealers are not required to collect the tax from such purchasers. 1954-56 Op. Att’y Gen. p. 865.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 208. **Am. Jur. 2d.** — 67B Am. Jur. 2d, Sales and Use Taxes, § 208. **C.J.S.** — 84 C.J.S., Taxation, § 163. **ALR.** — Right of seller to collect from buyer amount of sales tax in addition to price fixed by the contract, 127 ALR 1183. Sales and use taxes on sale or lease of mailing or customer list, 80 ALR4th 1126.

48-8-35. Addition of tax by dealer to sale price or charge; amount of tax as debt owed by purchaser to dealer; liability of dealer for failure to collect.

Each dealer shall add the amount of the tax imposed under this article, as far as practicable, to the sale price or charge. The tax shall be a debt from the purchaser or consumer to the dealer until it is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts. Any dealer who neglects, fails, or refuses to collect the tax provided for in this article upon a retail sale of tangible personal property made by him, his agent, or his employee when the sale is subject to the tax shall be liable for and shall pay the tax himself. (Ga. L. 1951, p. 360, § 12; Ga. L. 1953, Jan.-Feb. Sess., p. 197, § 1; Code 1933, § 91A-4512, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 95.)

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Dealer responsible for collection and remittance. — Responsibility for collecting the taxes levied under Ga. L. 1951, p. 360 from the purchaser and remitting such taxes to the commissioner is on the dealer. *Thyer Mfg. Corp. v. Drake*, 217 Ga. 114, 121 S.E.2d 136 (1961). **Failure to report taxes collected.** — Provisions of Ga. L. 1951, p. 360 exclude the idea that the tax is always payable at the time of the sale. However, a failure to report a collection violates the statute. *Drake v. Thyer Mfg. Corp.*, 105 Ga. App. 20, 123 S.E.2d 457 (1961).

Failure to report sale no bar to recovery of tax where tax has been paid. — Payment of the tax, whenever made, is regarded as full compliance with the law, whether certain technical details in the reporting of the tax, or any other preliminary requirements, are omitted. Mere failure to report the sale will not preclude the right to recover the tax when the end, namely payment, sought by the law, has been in fact made. *Drake v. Thyer Mfg. Corp.*, 105 Ga. App. 20, 123 S.E.2d 457 (1961). **Attachment and ranking of lien for**

sales and use taxes. — Lien and the lien’s rank is provided for the state for sales and use taxes. Such lien attaches on the day on which the dealer is required to make the return and remittance to the commissioner and is declared to be superior to all other liens. *State v. Atlanta Provision Co.*, 90 Ga. App. 147, 82 S.E.2d 145 (1954).

Effect of failure to record fi. fa. — Recording of the fi. fa. issued by the commissioner on the general execution docket is not a condition precedent to attachment

of the lien for sales taxes. The only effect of a failure to record the lien is that as against innocent purchasers the lien will be lost. *State v. Atlanta Provision Co.*, 90 Ga. App. 147, 82 S.E.2d 145 (1954).

Cited in *International Computer Group, Inc. v. Data Gen. Corp.*, 159 Ga. App. 169, 283 S.E.2d 12 (1981); *Citibank (South Dakota), N.A. v. Graham*, 315 Ga. App. 120, 726 S.E.2d 617 (2012), cert. denied, No. S12C1281, 2012 Ga. LEXIS 1017 (Ga. 2012).

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 208 et seq.

ALR. — Right as between dealer or

manufacturer and taxing authorities in respect of taxes and license fees illegally received or collected, 119 ALR 542.

48-8-36. Prohibition of advertising by dealer of assumption of payment of tax; exception; liability of dealer.

No person engaged in making retail sales shall advertise or represent to the public in any manner directly or indirectly that he or she will absorb all or any part of the tax or that he or she will relieve the purchaser of the payment of all or any part of the tax imposed by this article unless:

- (1) The retailer includes in the advertisement that any portion of the tax not paid by the purchaser will be remitted on behalf of the purchaser by the retailer; and
- (2) The retailer furnishes the purchaser with written evidence that the retailer will be liable for and pay any tax the purchaser was relieved from paying under this Code section.

If a retailer advertises that any portion of the tax not paid by the purchaser will be remitted on the purchaser’s behalf by the retailer, the retailer shall be solely liable for and shall pay that portion of the tax. If a dealer or retailer complies with the provisions of this Code section and pays the absorbed tax over to the commissioner as provided by law, the dealer or retailer shall be deemed to have complied with the provisions of this article requiring collection of the tax from the purchaser or consumer. (Ga. L. 1951, p. 360, § 12; Ga. L. 1960, p. 153, § 5; Code 1933, § 91A-4514, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2012, p. 954, § 1/SB 332.)

The 2012 amendment, effective July 1, 2012, in the introductory language, twice inserted “or she” and substituted

“unless:” for a period at the end; and added paragraphs (1), (2), and the ending undesignated paragraph.

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Assumption by seller of the risk of a variable and unascertainable amount of tax violates this section. 1969 Op. Att'y Gen. No. 69-439.

48-8-37. Violation of Code Section 48-8-36; penalty.

(a) It shall be unlawful for any person to violate Code Section 48-8-36.

(b) Any person who violates Code Section 48-8-36 shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$25.00 nor more than \$250.00 or imprisonment in the county jail for not more than three months, or both. Any person who is convicted of a second or subsequent violation of Code Section 48-8-36 shall be punished by a fine of \$500.00 and imprisonment for six months. (Ga. L. 1951, p. 360, § 12; Code 1933, § 91A-9935, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48.)

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Contracts in violation of section not thereby nullified. — Although this section provides a penalty for absorbing the sales tax, it was designed merely for revenue purposes, not for the protection of

the public, and does not impliedly nullify a contract made in contravention of this section. *Chilivis v. Rogers Oil Co.*, 135 Ga. App. 176, 217 S.E.2d 179 (1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 222.

48-8-38. Burden of proof on seller as to taxability; certificate that property purchased for resale; requirements of purchaser having certificate; contents; proof of claimed exemption.

(a) All gross sales of a retailer are subject to the tax imposed by this article until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail shall be upon the person who makes the sale unless such person, in good faith, takes from the purchaser a certificate stating that the property is purchased for resale or is otherwise tax exempt.

(b) The certificate relieves the seller from the burden of proof as provided in subsection (a) of this Code section if the seller acquires from the purchaser a properly completed certificate taken in good faith. A properly completed certificate taken in good faith means a seller shall obtain a certificate:

(1) That is fully completed, including, but not limited to, the name, address, sales tax number, and signature of the taxpayer when required;

(2) In a form appropriate for the type of exemption claimed;

(3) Claiming an exemption that was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;

(4) Claiming an exemption that could be applicable to the item being purchased; and

(5) Claiming an exemption that is reasonable for the purchaser's type of business.

(c) The certificate relieves the seller from the burden of proof on sales for resale as provided in subsection (a) of this Code section if the seller acquires from the purchaser a properly completed certificate, taken in good faith, from a purchaser who:

(1) Is engaged in the business of selling tangible personal property;

(2) Has a valid sales tax registration number at the time of purchase and has listed his or her sales tax number on the certificate; and

(3) At the time of purchasing the tangible personal property, the seller has no reason to believe that the purchaser does not intend to resell it in his or her regular course of business.

(d) The certificate shall include such information as is determined by the commissioner and is signed by the purchaser if it is a paper exemption certificate.

(e) A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred. (Ga. L. 1951, p. 360, §§ 5-7; Code 1933, § 91A-4507, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 94; Ga. L. 2010, p. 662, § 10/HB 1221; Ga. L. 2011, p. 38, § 5/HB 168; Ga. L. 2013, p. 7, § 6/HB 266.)

The 2011 amendment, effective April 27, 2011, substituted "such person" for "he" in the second sentence of subsection (a) and added subsections (d) through (g).

The 2013 amendment, effective March 5, 2013, in subsection (a), in the second sentence, substituted "retail shall be" for "retail is" near the beginning, inserted ", in good faith," near the middle, and inserted "tax" near the end; in subsection (b), added "taken in good faith" at the end of the first sentence and added the

second sentence; added subsection (c); re-designated former subsection (c) as present subsection (d); deleted former subsection (d), which read: "A purchaser claiming an exemption electronically shall use the standard form as adopted by the Streamlined Sales Tax Governing Board."; and deleted subsection (f), which read: "The department shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate approved by the Streamlined

Sales Tax Governing Board, the department, or the Multistate Tax Commission or captures the relevant data elements required under the Streamlined Sales and Use Tax Agreement within 90 days subsequent to the date of sale. If the seller has not obtained a fully completed exemption certificate or all relevant data elements required under the Streamlined Sales and Use Tax Agreement within 90 days subsequent to the date of sale, the department shall provide the seller with 120 days subsequent to a request for substantiation to either:

“(1) Obtain a fully completed exemption certificate from the purchaser, taken in good faith which means that the seller obtain a certificate that claims an exemption that:

“(A) Was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;

“(B) Could be applicable to the item being purchased; and

“(C) Is reasonable for the purchaser’s type of business; or

“(2) Obtain other information establishing that the transaction was not subject to the tax.”; and deleted subsection (g), which read: “The department shall relieve a seller of the tax otherwise applicable if the seller obtains a blanket exemption certificate from a purchaser with which the seller has a recurring business relationship.”

JUDICIAL DECISIONS

Cited in International Computer Group, Inc. v. Data Gen. Corp., 159 Ga. App. 169, 283 S.E.2d 12 (1981); Strickland

v. W.E. Ross & Sons, 251 Ga. 324, 304 S.E.2d 719 (1983).

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Section applies to sales to nonprofit organizations. — Nonprofit organizations are not, because of their status as such, exempt from sales and use taxes. When the organization is not registered

with the commissioner as a dealer, one who sells to the nonprofit organization must collect the tax. 1971 Op. Att’y Gen. No. U71-143.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 209.

ALR. — Burden of proof as to amount for which dealer is liable under sales tax

or tax based on amount sold or offered for sale, 39 ALR 273.

Reusable soft drink bottles as subject to sales or use taxes, 97 ALR3d 1205.

48-8-39. Effect of use other than retention, demonstration, or display by giver of certificate or by processor, manufacturer, or converter.

(a) If a purchaser who gives a certificate stating that property is purchased for resale makes any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the use shall be deemed a retail sale by the purchaser as of the time the property is first used by him and the purchase price of the property to him shall be deemed the gross receipts from the retail sale. If the sole use of the property other than retention,

demonstration, or display in the regular course of business is the rental of the property while holding it for sale or the transportation of persons for hire while holding the property for sale, the purchaser may elect to include in his gross receipts either the amount of the rental charged or the total amount of the charges made by him for the transportation rather than the cost of the property to him.

(b)(1)(A) If a person who engages in the business of processing, manufacturing, or converting industrial materials into articles of tangible personal property for sale, whether as custom-made or stock items, makes any use of the article of tangible personal property other than retaining, demonstrating, or displaying it for sale, the use shall be deemed a retail sale as of the time the article is first used by such person and its fair market value at the time shall be deemed the sales price of the article, except as otherwise provided in subparagraph (B) of this paragraph.

(B)(i) As used in this subparagraph, the term “total raw material cost” means the manufactured cost of carpet samples; supplies used in the manufacturing of carpet samples such as binding, grommets, and similar items; carpet sample display devices such as racks, binders, and similar items; and inbound freight charges. Such term does not mean or include labor or overhead for assembling or producing samples from finished carpet and does not mean or include outbound freight charges which may be charged to the expense account for carpet samples.

(ii) For purposes of subparagraph (A) of this paragraph, the fair market value of any carpet sample shall be equal to 21.9 percent of the total raw material cost of the sample, except that the fair market value of a sample of carpet that is manufactured exclusively for commercial use shall be equal to 1 percent of the total raw material cost of the sample.

(2) If the sole use of the article other than retaining, demonstrating, or displaying it for sale is the rental of the article while holding it for sale, the processor, manufacturer, or converter may elect to treat the amount of the rental charged rather than the fair market value of the article as its sales price. (Ga. L. 1951, p. 360, § 8; Ga. L. 1968, p. 496, § 1; Ga. L. 1970, p. 595, § 1; Code 1933, § 91A-4508, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 385, § 1; Ga. L. 2006, p. 470, § 1/HB 1040; Ga. L. 2010, p. 662, § 11/HB 1221.)

Law reviews. — For article, “Administrative Law,” see 53 Mercer L. Rev. 81 (2001). For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46,

and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Govern-

ment, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

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For constitutionality, see *Ingalls Iron Works Co. v. Chilivis*, 237 Ga. 479, 228 S.E.2d 866 (1976), appeal dismissed, 429 U.S. 1081, 97 S. Ct. 1086, 51 L. Ed. 2d 528 (1977).

Ga. L. 1951, p. 360 was not impliedly repealed by Ga. L. 1960, p. 989, § 1. *Bailes Oldsmobile, Inc. v. Hawes*, 122 Ga. App. 395, 177 S.E.2d 170 (1970).

Purpose of Ga. L. 1951, p. 360, § 2 differs from that of Ga. L. 1951, p. 360, § 8. *Law Lincoln Mercury, Inc. v. Strickland*, 246 Ga. 237, 271 S.E.2d 152 (1980).

Ga. L. 1951, p. 360, §§ 2 and 8 operate to tax sales made under different circumstances. *Law Lincoln Mercury, Inc. v. Strickland*, 246 Ga. 237, 271 S.E.2d 152 (1980).

This section creates nothing more than a rebuttable presumption. *Bailes Oldsmobile, Inc. v. Hawes*, 122 Ga. App. 395, 177 S.E.2d 170 (1970).

O.C.G.A. § 48-8-39 applies to property held for sale to general public. — Words "holding it for sale in the regular course of business" in the first sentence of this section refer to holding for sale to the general public. *Superior Type, Inc. v. Williams*, 98 Ga. App. 89, 105 S.E.2d 14 (1958).

No exemption is permitted for personal uses of property. *Law Lincoln Mercury, Inc. v. Strickland*, 246 Ga. 237, 271 S.E.2d 152 (1980).

Use other than demonstration or display deemed taxable purchase. — As soon as retail seller makes any use of the property other than demonstration or display in the regular course of business, the seller is deemed to have purchased the property personally and will be taxed on the property. *Law Lincoln Mercury, Inc. v. Strickland*, 246 Ga. 237, 271 S.E.2d 152 (1980).

Seller must pay tax when personal use made of property. — If a retailer takes merchandise to the retailer's home for personal use the retailer would at that

time be liable for the tax, regardless of the fact that at some subsequent time the retailer sells the machine in the regular course of business. Similarly, if the seller makes personal use of materials used for producing goods for sale, the seller is liable for the tax even if such materials are used to fill an order and are sold to a customer along with the order. *Superior Type, Inc. v. Williams*, 98 Ga. App. 89, 105 S.E.2d 14 (1958).

Sale of small portion otherwise used for personal use not taxable. — One who sells at retail a small portion of industrial materials one has otherwise produced or manufactured for own use will not be subject to a sales or use tax on the fair market value of those materials one uses personally. *Strickland v. W.E. Ross & Sons*, 251 Ga. 324, 304 S.E.2d 719 (1983).

Tax on personal use followed by tax on sale to customer permissible. — Tax of retail purchaser who makes any use of property other than retention, demonstration, or display while holding the property for sale in the regular course of business, under Ga. L. 1951, p. 360, § 8, and subsequent tax if the purchaser thereafter sells the property to a consuming purchaser, involve two distinct sales transactions which are independent taxable events, and are not violative of the prohibition against duplication of taxes under Ga. L. 1951, p. 360, § 2. *Law Lincoln Mercury, Inc. v. Strickland*, 246 Ga. 237, 271 S.E.2d 152 (1980).

Personal use of a demonstrator automobile for over six months is not a use which this section will excuse. *Law Lincoln Mercury, Inc. v. Strickland*, 246 Ga. 237, 271 S.E.2d 152 (1980).

Rebuttable presumption that automobiles held more than six months not used solely for demonstration. — Under the Official Compilation of Rules and Regulations of the State of Georgia, Rules of the Department of Revenue, § 560-12-2-09(5), a rebuttable presump-

tion arises that automobiles held in excess of six months are not being used solely for retention, demonstration, or display. *Law Lincoln Mercury, Inc. v. Strickland*, 246 Ga. 237, 271 S.E.2d 152 (1980).

Personal and business use of demonstrator cars by employees of dealer. — When demonstrator cars are driven by employees of dealer for both personal and business purposes for more than six months, the dealer could not escape tax liability by simply denominating personal uses of the automobiles as displays to the community. *Law Lincoln Mercury, Inc. v. Strickland*, 246 Ga. 237, 271 S.E.2d 152 (1980).

Contractor liable for tax on raw materials even if purchaser exempt. — Fabrication of raw materials by a contractor into products to be installed and incorporated into realty constitutes a use or consumption by the contractor, who is liable for the tax, regardless of the fact that the entity with whom it is contracting is a political subdivision exempt from the payment of sales tax. *Macon Mach. Shop, Inc. v. Hawes*, 118 Ga. App. 280, 163 S.E.2d 440 (1968).

Use of materials sold to customer together with order produced from such materials. — When materials are purchased by seller from another who has prepared such materials to order for the benefit of a customer who has placed an order, and are then resold to such customer, the use is for the benefit of the customer, and this section did not apply. *Superior Type, Inc. v. Williams*, 98 Ga. App. 89, 105 S.E.2d 14 (1958).

Use of items furnished by customer not taxable. — Use made of an item

produced from materials furnished by the customer for the purpose of producing goods for such customer is not a use contemplated by this section, for the reason that it is solely for the benefit of the buyer who ultimately receives both title and right of possession of such item, and pays the sales tax thereon. Its purchase in the first instance by the seller is for the purpose of resale after use for the benefit of the person to whom it is resold by producing goods which the customer has ordered. *Superior Type, Inc. v. Williams*, 98 Ga. App. 89, 105 S.E.2d 14 (1958).

Carpet manufacturer's use of carpet samples in connection with its sales of carpeting constituted a "fictional sale" under O.C.G.A. § 48-8-39(b) and the samples were subject to tax; however, the fair market value of the samples was zero so that no taxes were owed for such sales. *Collins v. Prince St. Technologies Ltd.*, 220 Ga. App. 492, 469 S.E.2d 700 (1996).

Contact lenses. — Lenses given to eye-care professionals for their use in any way they saw fit was simply a marketing scheme designed to promote the sale of lenses manufactured by the plaintiff; therefore, those lenses were properly classified as deemed retail sales. However, lenses in packages which sales representatives opened for demonstration purposes were exempt from taxation. *CIBA Vision Corp. v. Jackson*, 248 Ga. App. 688, 548 S.E.2d 431 (2001).

Ophthalmic drugs. — Drugs packaged or designated as samples were taxable because those drugs were not purchased for resale. *CIBA Vision Corp. v. Jackson*, 248 Ga. App. 688, 548 S.E.2d 431 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Manufacturer taxable for own use of goods. — Manufacturer of personal property for sale is subject to sales tax on use of such manufactured goods based on fair market value of goods at time of use. 1969 Op. Att'y Gen. No. 69-139.

Cost of items purchased under a certificate for resale but withdrawn from stock for other use is subject to tax. 1969 Op. Att'y Gen. No. 69-126.

Dispensing of drugs by pharmacist. — Pharmacist, with respect to dispensing drugs under Medicaid, is in a position analogous to that of a dealer who withdraws goods from inventory to provide a service. The use is taxable to the pharmacist at cost. 1971 Op. Att'y Gen. No. 71-145.

48-8-40. Effect of sales from commingled goods when certificate given for portion of goods.

If a purchaser gives a certificate with respect to the purchase of fungible goods and after giving the certificate commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold. (Ga. L. 1951, p. 360, § 9; Code 1933, § 91A-4509, enacted by Ga. L. 1978, p. 309, § 2.)

48-8-41. Bringing action raising issue of taxability; copy of initial pleading to Attorney General; filing of acknowledgment of pleading in court; judgment void absent filed acknowledgment.

If the issue of taxability under this article is raised in any case, the person raising the issue shall furnish the Attorney General with a copy of the initial pleading in which the issue is raised. The Attorney General shall acknowledge receipt of the pleading and his acknowledgment shall be filed in the court in which the case is pending. Any judgment rendered in a case in which the acknowledgment has not been filed shall be void and of no effect. (Ga. L. 1951, p. 360, § 12; Ga. L. 1953, Jan.-Feb. Sess., p. 197, § 1; Code 1933, § 91A-4512.1, enacted by Ga. L. 1979, p. 5, § 96.)

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Notice under § 48-2-9 need not be given when action brought to recover taxes. — Action to recover a sum alleged to be due as a tax imposed by Ga. L. 1951, p. 360 may be maintained under those

provisions without giving notice thereof under Ga. L. 1937-38, Ex. Sess., p. 77, § 8. *Craig-Tourial Leather Co. v. Reynolds*, 87 Ga. App. 360, 73 S.E.2d 749 (1952).

RESEARCH REFERENCES

C.J.S. — 7A C.J.S., Attorney General, §§ 10, 11.

ALR. — Sales or use tax on motor

vehicle purchased out of state, 45 ALR3d 1270.

48-8-42. Credit for tax when like tax paid in another state; procedure; proof of payment; payment of difference when like tax less than tax imposed by article; no credit absent reciprocity; exception.

(a) This article shall not apply with respect to the use, consumption, distribution, or storage of tangible personal property in this state upon which a like tax equal to or greater than the amount imposed by this article has been paid in another state. The proof of payment of the tax shall be determined according to rules and regulations made by the commissioner. If the amount of tax paid in another state is less than the amount of tax imposed by this article, the dealer shall pay to the commissioner an amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed by this article.

(b) Except as provided in this subsection, no credit shall be given under this Code section for taxes paid in another state if the other state does not grant like credit for taxes paid in this state. Credit in the amount of tax actually paid in a state which does not grant like credit for taxes paid in this state shall be given up to the amount of the like tax due in this state only with respect to any use in the other state of tangible personal property by a manufacturer or fabricator in fulfillment of a bona fide written contract to furnish the property and perform services relative to the property in the other state when the property was manufactured or fabricated in this state exclusively for use by the manufacturer or fabricator as a contractor in fulfillment of the contract. (Ga. L. 1951, p. 360, § 10; Ga. L. 1953, Nov.-Dec. Sess., p. 369, § 1; Ga. L. 1976, p. 469, § 1; Code 1933, § 91A-4510, enacted by Ga. L. 1978, p. 309, § 2.)

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the

General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U.L. Rev. 217 (2011).

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Intent as to credit for taxes paid in other states. — Intent in this state is to allow credit for a like taxable incident which first occurs in another state and to collect a tax based on a taxable incident in this state occurring thereafter, but only to the extent of the difference between a

lesser like tax previously paid and the Georgia tax, and only if the other state has a reciprocal law. *Hawes v. National Serv. Indus., Inc.*, 121 Ga. App. 775, 175 S.E.2d 34 (1970), *aff’d*, 227 Ga. 221, 179 S.E.2d 765 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, §§ 79, 176. provisions allowing use tax credit for tax paid in other state, 31 ALR4th 1206.

ALR. — Validity and construction of

48-8-43. Disposition of taxes collected in excess of 4 percent.

When the tax collected for any period is in excess of 4 percent, the total tax collected shall be paid over to the commissioner less the compensation to be allowed the dealer. (Ga. L. 1951, p. 360, § 12; Code 1933, § 91A-4513, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 62, § 7.)

48-8-44. Payment of tax when used articles taken as credit on sale of new and used articles.

When used articles are taken in trade or a series of trades as a credit or partial payment on the sale of new and used articles, the tax imposed by this article shall be paid on the value of the new or used articles less the credits for the used articles. (Ga. L. 1951, p. 360, § 13; Code 1933, § 91A-4517, enacted by Ga. L. 1978, p. 309, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Trade-in credit provision does not apply to automobile dealers who “trade” with themselves. 1975 Op. Att’y Gen. No. U75-76.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 129. where property is turned in by purchaser, 4 ALR2d 1059.

ALR. — Computation of sales tax

48-8-45. Reporting cash and credit sales; change of basis of accounting; payment of tax at time of filing return under cash basis of accounting; deduction of bad debts under accrual basis of accounting; availability of refund; bad debt deduction or refund nonassignable; allocation of bad debts.

(a) Any dealer taxable under this article having both cash and credit sales may report the sales on either the cash or accrual basis of accounting. Each election of a basis of accounting shall be made on the first return filed and, once made, the election shall be irrevocable unless the commissioner grants written permission for a change. Permission for a change in the basis of accounting shall be granted only upon written application and under rules and regulations promulgated by the commissioner.

(b) Any dealer reporting on a cash basis of accounting shall include in each return all cash sales made during the period covered by the return and all collections made in any period on credit sales of prior periods and shall pay the tax on the sales at the time of filing the return.

(c) Any dealer reporting on the accrual basis of accounting shall be allowed a deduction for bad debts under rules and regulations of the commissioner. Any deduction taken or refund claimed that is attributed to bad debts shall not accrue or include interest.

(d) The bad debt may be deducted on the return for the period during which the bad debt is written off as uncollectable in the claimant's books and records and is eligible to be deducted for federal income tax purposes. Any such deduction for such bad debt shall be reported as a separate line item on the claimant's sales and use tax return. If such deduction is not reported as a line item, it shall be disallowed. A claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectable in the claimant's books and records and the claimant would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(e) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made. For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and, secondly, to interest, service charges, and any other charges.

(f)(1) As used in this subsection, "assignee" includes but is not limited to:

(A) Assignees of promissory notes, accounts, or accounts receivable; or

(B) Financial institutions that do not make taxable retail sales but that finance retail sales by making loans or issuing credit cards to purchasers.

(2) The deduction and refund provided for in this Code section are not assignable. The deduction and refund provided for in this Code section are only available to a dealer that makes a taxable retail sale, remits tax on that sale, and subsequently incurs a bad debt with respect to that sale. Assignees may not take a deduction or claim a refund pursuant to this Code section.

(g) For purposes of calculating the deduction taken or refund claimed, a “bad debt” shall have the same meaning as defined in 26 U.S.C. Section 166. However, the amount calculated pursuant to 26 U.S.C. Section 166 shall be adjusted to exclude:

- (1) Financing charges or interest;
- (2) Sales or use taxes charged on the purchase price;
- (3) Uncollectable amounts on property that remain in the possession of the seller until the full purchase price is paid;
- (4) Expenses incurred in attempting to collect any debt; and
- (5) Repossessed property.

(h) For bad debts incurred and written off after January 1, 2011, when the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed. The statute of limitations for filing such claim shall be three years from the due date of the return on which the bad debt could first be claimed. Such refund shall be claimed on such form as shall be established by the commissioner.

(i) Where filing responsibilities have been assumed by a certified service provider, the department allows the service provider to claim, on behalf of the seller, any bad debt allowance provided by this Code section. Such refund shall be claimed on such form as shall be established by the commissioner. The certified service provider must credit or refund the full amount of any bad debt allowance or refund received to the seller.

(j) Where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the Streamlined Sales Tax member states, such allocation is permitted. (Ga. L. 1951, p. 360, § 14; Code 1933, § 91A-4518, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1998, p. 604, § 1; Ga. L. 2008, p. 340, § 3/HB 948; Ga. L. 2010, p. 662, § 12/HB 1221; Ga. L. 2011, p. 38, § 6/HB 168.)

The 2011 amendment, effective April 27, 2011, substituted “dealer” for “person” throughout; added the second sentence in subsection (c); substituted the present provisions of subsection (d) for the former provisions, which read: “An assignee of private label credit card debt purchased directly from a dealer without recourse or a credit card bank which extends such credit to customers under a private label credit card program shall be allowed a deduction for private label credit card bad

debts under rules and regulations of the commissioner. An issuer or assignee of private label credit card debt may claim its deduction for private label credit card bad debts on a return filed by a member of an affiliated group as defined under 26 U.S.C. Section 1504.”; and added subsections (e) through (j).

Law reviews. — For article, “Administrative Law,” see 53 Mercer L. Rev. 81 (2001).

JUDICIAL DECISIONS

O.C.G.A. § 48-8-45(c). — Company which financed both automobile dealers' wholesale floor plans and retail purchases by consumers of automobiles from the dealers did not qualify as "any person" under O.C.G.A. § 48-8-45(c) so as to entitle the company to seek a deduction for bad debts under the Sales and Use Tax Act, O.C.G.A. Art. 1, Ch. 8, T. 48. *GMAC v. Jackson*, 247 Ga. App. 141, 542 S.E.2d 538 (2000).

Only potential tax relief afforded by statute is deduction. — Trial court

did not err in dismissing a bank's complaint alleging that the bank was entitled to a refund for sales tax paid under the Bad Debt Statute, O.C.G.A. § 48-8-45, because the only potential tax relief afforded by O.C.G.A. § 48-8-45(c) was a deduction; in drafting the Bad Debt Statute, the General Assembly chose to grant only a deduction for bad credit card debt. *Citibank (South Dakota), N.A. v. Graham*, 315 Ga. App. 120, 726 S.E.2d 617 (2012), cert. denied, No. S12C1281, 2012 Ga. LEXIS 1017 (Ga. 2012).

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 205 et seq.

C.J.S. — 85 C.J.S., Taxation, §§ 1850, 1860, 1901 et seq.

48-8-46. Final return and payment upon sale of or quitting business; withholding of sufficient amount of purchase money by successor; effect of failure to withhold.

If any dealer liable for any tax, interest, or penalty imposed by this article sells out his business or stock of goods or equipment or quits the business, he shall make a final return and payment within 15 days after the date of selling or quitting the business. The dealer's successor or assigns, if any, shall withhold a sufficient amount of the purchase money to cover the amount of the taxes, interest, and penalties due and unpaid until the former owner produces either a receipt from the commissioner showing that the taxes, interest, and penalties have been paid or a certificate from the commissioner stating that no sales and use taxes, interest, or penalties are due. If the purchaser of a business or stock of goods or equipment fails to withhold the purchase money as required by this Code section, he shall be personally liable for the payment of any sales and use taxes, interest, and penalties accruing and unpaid by any former owner or assignor. The personal liability of the purchaser in such a case shall not exceed the amount of the total purchase money, but the property being transferred shall in all cases be subject to the full amount of the tax lien arising from the delinquencies of the former owner. (Ga. L. 1951, p. 360, § 15; Ga. L. 1960, p. 153, § 6; Code 1933, § 91A-4519, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 11.)

Law reviews. — For article, "Common State Tax Pitfalls in the Acquisition or

Disposition of Businesses in Georgia," see 22 Ga. St. B.J. 82 (1985).

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Section comports with due process and equal protection requirements.

— Ga. L. 1951, p. 360, § 15 is not unconstitutional under U.S. Const., amend. 14 or Ga. Const. 1945, Art. I, Sec. I, Para. III (see Ga. Const. 1983, Art. I, Sec. I, Para. I) because it must be considered in pari materia with Ga. L. 1937-38, Ex. Sess., p. 77, § 44 and Ga. L. 1937-38, Ex. Sess., p. 77, § 45 which provide for due process. *Richards v. Blackmon*, 233 Ga. 739, 213 S.E.2d 638 (1975).

Stock of goods or equipment.

— Buyer's purchase of the inventory, furniture, fixtures, equipment, vehicles, goodwill, and other assets from its predecessor in interest constituted the purchase of the "stock of goods or equipment" of a dealer liable for sales taxes due and brought the sale within the purview of O.C.G.A. § 48-8-46. *JD Design Group, Inc. v. Graham*, 282 Ga. 130, 646 S.E.2d 227 (2007).

Section does not deprive a purchaser of due process and equal protection of the law when a purchaser can prevent liability by compliance with this section's provisions. *Richards v. Blackmon*, 233 Ga. 739, 213 S.E.2d 638 (1975).

Buyer's duty to search lien recordings. — Buyer's claim that the buyer was an innocent purchaser for value did not afford the buyer relief from liability for the taxes owed under O.C.G.A. § 48-8-46 as the statute effectively put the buyer on notice of the possibility of tax liability not apparent from a search of the lien recordings because the statute imposed a duty to inquire on the buyer; additionally, the buyer could have prevented the buyer's liability by withholding part of the purchase money to cover such taxes, or could have required the buyer's predecessor to produce a certificate from the commissioner that no taxes were due. *JD Design Group, Inc. v. Graham*, 282 Ga. 130, 646 S.E.2d 227 (2007).

Relationship of debtor and creditor does not exist between the state and the dealer. — Dealer's relationship to the

state is that of a taxpayer. *Richards v. Blackmon*, 233 Ga. 739, 213 S.E.2d 638 (1975).

Uniform Commercial Code provisions on bulk transfers did not deal with taxpayers; therefore, it does not impliedly repeal Ga. L. 1951, p. 360, § 15. *Richards v. Blackmon*, 233 Ga. 739, 213 S.E.2d 638 (1975).

Effect of affidavit listing no creditors under T. 11, Art. 6. — Affidavit of a seller of a business listing no creditors pursuant to the provisions on bulk transfers does not relieve the purchaser from a tax assessment made under this section. *Richards v. Blackmon*, 233 Ga. 739, 213 S.E.2d 638 (1975).

Summary judgment as to the issue of a successor in interest's liability for unpaid taxes in favor of that successor was reversed as the successor failed to protect itself from successor liability for the unpaid sales and use taxes owed by its predecessor under O.C.G.A. § 48-8-46, and the successor failed to protect itself against unrecorded tax liens to the extent allowed by the statute. *Graham v. JD Design Group, Inc.*, 281 Ga. App. 347, 636 S.E.2d 66 (2006).

No successor liability. — Appellee that purchased assets used in a business was not liable for sales and use taxes as a successor to a corporation under O.C.G.A. § 48-8-46 as the appellee had not purchased the assets from the corporation itself. *Graham v. Palmtop Props.*, 284 Ga. App. 730, 645 S.E.2d 343 (2007).

Statutory estoppel did not apply to lien. — No statutory estoppel applied to a lien to which the Georgia Department of Revenue was entitled with regard to delinquent sales taxes. *JD Design Group, Inc. v. Graham*, 282 Ga. 130, 646 S.E.2d 227 (2007).

Cited in *Amoco Oil Co. v. G. Sims & Assocs.*, 162 Ga. App. 307, 291 S.E.2d 128 (1982); *Miles v. Georgia Dep't of Revenue*, 143 F.R.D. 302 (S.D. Ga. 1992); *Miles v. Georgia Dep't of Revenue*, 797 F. Supp. 987 (S.D. Ga. 1992).

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Section applicable even when purchaser does not continue business as going concern. — One who purchases either stock of goods or equipment from a going business does so at one's own peril unless and until one receives a certificate from the commissioner, even if the purchaser does not continue to operate the business as a going concern. 1963-65 Op. Att'y Gen. p. 337.

Liability when one purchases fran-

chise agreements and another the business property. — Company which purchases franchise agreements of a retail dealer and a company which purchases the business property are both liable for any sales tax, interest, and penalty thereon which became due by reason of taxable sales made by the retail dealer, the former owner, and are unpaid. 1969 Op. Att'y Gen. No. 69-186.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 222.

48-8-47. Notice by commissioner to persons holding credits of or owing debts to delinquent dealers; duty of such persons.

In the event any dealer is delinquent in the payment of the tax imposed by this article, the commissioner may give notice of the amount of the delinquency by registered or certified mail or statutory overnight delivery to all persons having in their possession or under their control any credits or other personal property belonging to the dealer and to all persons owing any debts to the dealer at the time of receipt by them of the notice. In lieu of registered or certified mail or statutory overnight delivery, the notice may be served and the recipient may acknowledge service thereof by telephonic facsimile transmission or by other means of instantaneous electronic transmission. Thereafter, no person so notified shall transfer or make any other disposition of the credits, other personal property, or debts until the commissioner has consented to a transfer or disposition or until 30 days have elapsed after the receipt of the notice. Each person so notified must advise the commissioner within five days after receipt of the notice of any and all credits, other personal property, or debts in such person's possession, under such person's control, or owing by such person as provided in this Code section. (Ga. L. 1951, p. 360, § 15; Code 1933, § 91A-4520, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1996, p. 780, § 4; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that this act shall apply with

respect to notices delivered on or after July 1, 2000.

48-8-48. Violation of Code Sections 48-8-46 and 48-8-47; penalty.

(a) It shall be unlawful for any person to violate Code Section 48-8-46 or 48-8-47.

(b) Any person who violates Code Section 48-8-46 or 48-8-47 shall be guilty of a misdemeanor. (Ga. L. 1951, p. 360, § 15; Code 1933, § 91A-9936, enacted by Ga. L. 1978, p. 309, § 2.)

48-8-49. Dealers' returns as to gross proceeds of sales and purchases; returns based on estimated tax liability; returns as to rentals or leases; granting of extensions.

(a) Each dealer, on or before the twentieth day of each month, shall transmit returns to the commissioner showing the gross sales and purchases arising from all sales and purchases taxable under this article during the preceding calendar month. The commissioner may provide by regulation for quarterly or annual returns or, upon application, may permit a dealer to file a return on a quarterly or annual basis if deemed advisable by the commissioner. The returns required by this subsection shall be made upon forms prescribed, prepared, and furnished by the commissioner.

(b)(1) As used in this subsection, the term "estimated tax liability" means a dealer's tax liability, adjusted to account for any subsequent change in the state sales and use tax rate, based on the dealer's average monthly payments for the last calendar year.

(2) If the tax liability of a dealer in the preceding calendar year was greater than \$60,000.00 excluding local sales taxes, the dealer shall file a return and remit to the commissioner not less than 50 percent of the estimated tax liability for the taxable period on or before the twentieth day of the period. The amount of the payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section. This subsection shall not apply to any dealer whose primary business is the sale of motor fuels who is remitting prepaid state tax under paragraph (2) of subsection (b) of Code Section 48-9-14.

(c) Rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect to the sales price in accordance with the rules and regulations prescribed by the commissioner.

(d)(1) The commissioner, in his discretion, may grant extensions, upon written application, to the end of the calendar month in which any tax return is due under this Code section.

(2) No extension granted pursuant to paragraph (1) of this subsection shall be valid unless granted in writing and only for a period of not more than 12 consecutive months.

(3) Upon the grant of any extension authorized by this subsection, the taxpayer shall remit to the commissioner on or before the date the tax would otherwise become due without the grant of the extension an amount which, when added to the amount previously remitted for the period pursuant to subsection (b) of this Code section, equals not less than 100 percent of the dealer's payment for the corresponding period of the preceding tax year.

(4) No interest or penalty shall be charged, assessed, or collected by reason of the granting of an extension pursuant to this subsection.

(5) This subsection shall apply to all extensions granted pursuant to this subsection on or after July 1, 1980, and to all extensions granted pursuant to this subsection and in effect on July 1, 1980. (Ga. L. 1951, p. 360, § 16; Ga. L. 1952, p. 334, § 1; Ga. L. 1960, p. 153, § 7; Ga. L. 1972, p. 8, § 1; Code 1933, § 91A-4521, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 27; Ga. L. 1989, p. 62, § 8; Ga. L. 1990, p. 1243, § 5; Ga. L. 1996, p. 780, § 3; Ga. L. 2003, p. 355, § 4; Ga. L. 2003, p. 665, § 14; Ga. L. 2006, p. 530, § 1/HB 1120; Ga. L. 2010, p. 662, § 13/HB 1221; Ga. L. 2011, p. 38, § 7/HB 168.)

The 2011 amendment, effective April 27, 2011, substituted "calendar year" for "fiscal year" in paragraph (b)(1); substituted "\$60,000.00" for "\$30,000.00" in the first sentence of paragraph (b)(2); and, in subsection (c), substituted "Rentals" for "Gross proceeds from rentals" and substituted "sales price" for "gross proceeds".

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews. — For survey article on recent developments in Georgia state and

local taxation, see 34 Mercer L. Rev. 400 (1982). For article, "Clarification Needed in Georgia Retail Sales and Use Tax Statute," see 41 Mercer L. Rev. 1 (1989). For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 205 et seq.

C.J.S. — 84 C.J.S., Taxation, §§ 180, 620.

ALR. — Sales and use taxes on leased tangible personal property, 2 ALR4th 859.

48-8-50. Compensation of dealers for reporting and paying tax; reimbursement deduction.

(a) As used in this Code section, the term "affiliated entity" means with respect to any corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity, any other corporation, sole proprietorship, partnership,

limited partnership, enterprise, franchise, association, trust, joint venture, or other entity related thereto:

(1) As a parent, subsidiary, sister, or daughter corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity;

(2) By control of one corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity by the other; or

(3) By any other common ownership or control.

(b) Each dealer required to file a return under this article shall include such dealer's certificate of registration number or numbers for each sales location or affiliated entity of such dealer on such return. In reporting and paying the amount of tax due under this article, each dealer shall be allowed the following deduction, but only if the return was timely filed and the amount due was not delinquent at the time of payment; and that deduction shall be subject to the provisions of subsection (f) of this Code section pertaining to calculation of the deduction when more than one tax is reported on the same return:

(1) With respect to each certificate of registration number on such return, a deduction of 3 percent of the first \$3,000.00 of the combined total amount of all sales and use taxes reported due on such return for each location other than the taxes specified in paragraph (3) of this subsection;

(2) With respect to each certificate of registration number on such return, a deduction of one-half of 1 percent of that portion exceeding \$3,000.00 of the combined total amount of all sales and use taxes reported due on such return for each location other than the taxes specified in paragraph (3) of this subsection;

(3) With respect to each certificate of registration number on such return, a deduction of 3 percent of the combined total amount due of all sales and use taxes on motor fuel as defined under paragraph (9) of Code Section 48-9-2, which are imposed under any provision of this title, including, but not limited to, sales and use taxes on motor fuel imposed under any of the provisions described in subsection (f) of this Code section but not including Code Section 48-9-14; and

(4) A deduction with respect to Code Section 48-9-14, as defined in Code Section 48-8-2, shall be at the rate of one-half of 1 percent of the total amount due of the prepaid state tax reported due on such return, so long as the return and payment are timely, regardless of the classification of tax return upon which the remittance is made.

(c) The department shall compile and maintain a master registry of the certificate of registration numbers filed on such returns with

respect to all the affiliated business entities and multiple locations of each dealer and shall assign a master number to each dealer. Each dealer required to file a return under this article shall also include such dealer's master number on such return if such number has been assigned by the department under this subsection.

(d) With respect to a dealer which consists of only a single sales location or which consists of a group of fewer than four sales locations or affiliated entities, or any combination thereof, claiming such deduction, a separate return shall be filed for each sales location and affiliated entity for each reporting period. With respect to a dealer which consists of a group of four or more sales locations or affiliated entities, or any combination thereof, claiming such deduction, a single, consolidated return shall be filed for such entire group. A consolidated return under this subsection shall be used for the purpose of identifying the sales locations or affiliated entities of a dealer and such consolidated return shall identify separately the reporting and paying of the tax due under this article for each sales location or affiliated entity of such dealer. The deduction requirements of subsection (b) of this Code section shall apply separately to each certificate of registration number on such return.

(e) No deduction shall be allowed under this Code section unless all of the requirements of subsections (b), (c), and (d) of this Code section have been satisfied.

(f) The deduction authorized under this Code section shall be combined with and calculated with the deductions authorized under Code Section 48-8-87, Code Section 48-8-104, Code Section 48-8-113, Code Section 48-8-204, Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," and any other sales tax, use tax, or sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, by applying the deduction rate specified in this Code section against the combined total of all such taxes reported due on the same return.

(g) The reimbursement deduction authorized under Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," shall be at the rate and subject to the requirements specified under subsections (b) through (f) of this Code section.

(h) Each certified service provider as defined in Code Section 48-8-161 shall receive the amount provided in the contract between the certified service provider and the Streamlined Sales Tax Governing Board. (Ga. L. 1951, p. 360, § 16; Ga. L. 1964, p. 57, § 1; Ga. L. 1965, p. 321, § 1; Ga. L. 1966, p. 505, § 1; Ga. L. 1975, p. 101, § 1; Code 1933,

§ 91A-4522, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1992, p. 815, § 1; Ga. L. 1993, p. 995, § 1; Ga. L. 2003, p. 355, § 5; Ga. L. 2003, p. 665, § 15; Ga. L. 2004, p. 425, § 1; Ga. L. 2005, p. 159, § 23/HB 488; Ga. L. 2007, p. 309, § 3/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 14/HB 1221.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, “subsection (f) of this Code section” was substituted for “subsection (f) of Code section” near the end of paragraph (b)(3).

Editor’s notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2003.’”

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2005.’”

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

JUDICIAL DECISIONS

Seller acts as collecting agent for state. — Ultimate liability for a use tax is laid upon the purchaser, not the seller, whose role is merely that of collecting agent for the state. For this service the

seller is compensated, provided the taxes due are not delinquent at the time of payment. *Independent Publishing Co. v. Hawes*, 119 Ga. App. 858, 168 S.E.2d 904 (1969).

48-8-51. Extension of time for making returns; limit; conditions for valid extensions; remittance under extension; interest; estimate when no return or false return filed; presumption of correctness.

(a)(1) The commissioner may, for good cause, extend the time for making any returns required under this article for not more than 30 days.

(2) No extension granted pursuant to paragraph (1) of this subsection shall be valid unless granted in writing upon written application and only for a period, as appropriate, of not more than 12 consecutive months or four consecutive calendar quarters.

(3) Upon the grant of any extension authorized by this subsection, the dealer shall remit to the commissioner on or before the date the tax would otherwise become due without the grant of the extension an amount which equals not less than 100 percent of the dealer’s payment for the corresponding period of the preceding tax year.

(4) No interest shall be charged by reason of the granting of an extension pursuant to this subsection during the first ten days of each extension period. Thereafter, interest shall be collected upon the unpaid balance of the dealer’s liability at the rate specified in Code Section 48-2-40.

(5) This subsection shall apply to all extensions granted pursuant to this subsection on or after July 1, 1980, and to all extensions granted pursuant to this subsection and in effect on July 1, 1980.

(b) In the event any dealer fails to make a return and pay the tax as provided by this article or makes a grossly incorrect return or a return that is false or fraudulent, the commissioner shall make an estimate for the taxable period of retail sales of the dealer and the gross proceeds from rentals or leases of tangible personal property by the dealer and shall estimate the cost price of all articles of tangible personal property imported by the dealer for use, consumption, distribution, or storage for use or consumption in this state. Based upon his estimate, the commissioner shall assess and collect the tax, interest, and penalty, as accrued, on the basis of the assessments. The commissioner's assessments shall be considered *prima facie* correct and the burden to show the contrary shall rest upon the dealer. (Ga. L. 1951, p. 360, § 16; Code 1933, § 91A-4524, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 28.)

JUDICIAL DECISIONS

Assessment is *prima facie* evidence of assessment's correctness. — Language of this section making the assessment *prima facie* correct in effect makes the assessment *prima facie* evidence of the assessment's correctness. *Hawes v. Foster*, 118 Ga. App. 296, 163 S.E.2d 351 (1968).

Burden of going forward with evidence. — When a taxpayer attacks the legality of a tax levy by affidavit of illegality, the commissioner makes out a *prima facie* case by introducing the tax *fi. fa.*, and the burden of going forward with evidence shifts to the defendant in *fi. fa.* *Fowler v. Strickland*, 243 Ga. 30, 252 S.E.2d 459, cert. denied, 444 U.S. 827, 100 S. Ct. 53, 62 L. Ed. 2d 35 (1979).

Effect of the language of Ga. L. 1951, p. 360, § 16 and Ga. L. 1951, p. 360, § 18 is to shift to the taxpayer the burden of going forward with evidence to dispute the

correctness of an assessment made thereunder. *Fowler v. Strickland*, 243 Ga. 30, 252 S.E.2d 459, cert. denied, 444 U.S. 827, 100 S. Ct. 53, 62 L. Ed. 2d 35 (1979).

Assessments may not be issued for purpose of extending time for appeal.

— Assessment made by the commissioner pursuant to this section may not be cancelled or abated and a new assessment issued after the time for appeal has expired solely for the purpose of extending the time of appeal. *Undercofler v. VFW* Post 4625, 110 Ga. App. 711, 139 S.E.2d 776 (1964).

Section imposes no duty to conduct hearing. — This section places a duty on the commissioner to estimate, assess, and collect tax when a dealer either fails to make a return or makes a grossly incorrect, false, or fraudulent return. No mention is made of a duty to conduct a hearing. *Anderson v. Blackmon*, 123 Ga. App. 128, 179 S.E.2d 657 (1970).

48-8-52. Dealers' duty to keep records of sales, purchases, and invoices of goods; examination by commissioner; assessment and collection when no or incorrect invoice produced; presumption of correctness; fixing of actual consideration for lease or rental; collection.

(a)(1) Each dealer required to make a return and pay any tax under this article shall keep and preserve:

(A) Suitable records of the sales and purchases taxable under this article;

(B) Other books of account which are necessary to determine the amount of tax due;

(C) Other information as required by the commissioner; and

(D) For a period of three years, all invoices and other records of goods, wares, merchandise, and other subjects of taxation under this article.

(2) All books, invoices, and other records required to be kept by this subsection shall be open to examination at all reasonable hours by the commissioner or any of his duly authorized agents.

(b) In the event the dealer has imported tangible personal property and fails to produce an invoice showing the purchase price of each article subject to tax or if the invoice does not reflect the true or actual purchase price, the commissioner shall ascertain in any manner feasible the true purchase price and shall assess and collect the tax with interest and penalties as accrued on the true purchase price as assessed by the commissioner. The assessment so made shall be considered prima facie correct and the burden to show the contrary shall rest upon the dealer.

(c) In the case of the lease or rental of tangible personal property when the consideration reported by the dealer does not, in the judgment of the commissioner, represent the true or actual consideration, the commissioner may fix the true or actual consideration and collect the tax on the consideration in the same manner as provided in Code Section 48-8-51, with interest and penalties as accrued. (Ga. L. 1951, p. 360, § 16; Ga. L. 1953, Jan.-Feb. Sess., p. 200, § 1; Code 1933, § 91A-4525, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2010, p. 662, § 15/HB 1221.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1951, p. 360, § 17, which was subsequently repealed but was

succeeded by provisions in this Code section, are included in the annotations for this Code section.

Declaratory judgment as to taxability affords no relief from audit. — Declaratory judgment as to taxability under Ga. L. 1951, p. 360 will not relieve the taxpayer from audit of the taxpayer's books under Ga. L. 1951, p. 360, § 16 or Ga. L. 1951, p. 360, § 17 or Ga. L. 1951, p. 360, § 18. *Undercofler v. Eastern Air Lines*, 221 Ga. 824, 147 S.E.2d 436 (1966) (decided under Ga. L. 1951, p. 360, § 17).

Power of commissioner to rely on outside sources when taxpayer's records unavailable. — Whole thrust of Ga. L. 1951, p. 360, § 18 is to authorize the commissioner to make an assessment based upon whatever outside information the commissioner can locate when the commissioner does not have the benefit of the best source, the taxpayer's own records, because the taxpayer has refused to permit examination of the books or answer questions, first at the place of business, then after a formal notice. *Anderson v. Blackmon*, 123 Ga. App. 128, 179 S.E.2d 657 (1970) (decided under Ga. L. 1951, p. 360, § 17).

When commissioner must invoke

formal procedures to gain access to tax information. — Only when a dealer refuses to allow on-site examination of records, the most expeditious and least disruptive way to conduct an audit, need the commissioner invoke the formal notice to produce records or to subpoena employees in order to gain information from which the dealer can make a reasonably accurate assessment. *Anderson v. Blackmon*, 123 Ga. App. 128, 179 S.E.2d 657 (1970) (decided under Ga. L. 1951, p. 360, § 17).

Hearing under § 48-8-55 not required when tax records are known to be insufficient. — Ga. L. 1951, p. 360, § 18 sets out the procedures which must be exhausted before the commissioner can make an assessment without regard to the taxpayer's records, but does not require a useless notice and hearing when the dealer voluntarily opened records to the field auditors, the records were found insufficient, and the commissioner, with the taxpayer's knowledge, resorted to additional sources of information to compute the tax liability. *Anderson v. Blackmon*, 123 Ga. App. 128, 179 S.E.2d 657 (1970) (decided under Ga. L. 1951, p. 360, § 17).

Cited in *Bagley v. State*, 161 Ga. App. 688, 288 S.E.2d 332 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Limits on duty to maintain tax records. — State law requires that tax records be kept for a period of three years

only and that requirement is with respect to sales tax information only. 1969 Op. Att'y Gen. No. 69-288.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 205.

48-8-53. Duty of wholesalers and jobbers to keep records; contents; inspection by commissioner.

Each wholesale dealer or jobber in this state shall keep a record of all sales of tangible personal property made in this state whether the sales are for cash or on terms of credit. The record shall contain the name and address of the purchaser, the date of the purchase, the article purchased, and the price at which the article is sold to the purchaser. These records shall be kept for a period of three years and shall be open to inspection by the commissioner or his duly authorized deputies, agents,

and assistants at all reasonable hours during the day. (Ga. L. 1951, p. 360, § 16; Code 1933, § 91A-4526, enacted by Ga. L. 1978, p. 309, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Limits on duty to maintain tax records. — State law requires that tax records be kept for a period of three years only and that requirement is with respect to sales tax information only. 1969 Op. Att'y Gen. No. 69-288.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 205.

48-8-54. Failure of wholesalers or jobbers to keep and allow inspection of records under Code Section 48-8-53; penalty.

(a) It shall be unlawful for any wholesale dealer or jobber in this state to fail to keep the records required to be kept by Code Section 48-8-53 or to fail to permit an inspection of the records by the commissioner as provided in Code Section 48-8-53.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1951, p. 360, § 16; Code 1933, § 91A-9937, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 222.

48-8-55. Appearance before commissioner of dealer who fails to file return or files false or fraudulent return; notice; presumption of correctness of commissioner's assessment.

(a) If any dealer required to make and file a return under this article fails to submit the return within the time required or submits a return which is false or fraudulent in that it contains statements which differ from the true gross sales, purchases, leases, or rentals taxable under this article or otherwise fails to comply with this article for the taxable period for which the return is made, the commissioner shall give the dealer ten days' notice in writing prior to requiring the dealer to appear before him or his assistant with the books, records, and papers required by the commissioner which relate to the business of the dealer for the taxable period.

(b) Any assessment of a dealer by the commissioner pursuant to this article shall be deemed *prima facie* correct. (Ga. L. 1951, p. 360, § 18; Code 1933, § 91A-4528, enacted by Ga. L. 1978, p. 309, § 2.)

JUDICIAL DECISIONS

Power of commissioner to rely on outside sources when taxpayer's records unavailable. — Whole thrust of this section is to authorize the commissioner to make an assessment based upon whatever outside information the commissioner can locate when the commissioner does not have the benefit of the best source, the taxpayer's own records, because the taxpayer has refused to permit examination of the books or answer questions, first at the place of business, then after a formal notice. *Anderson v. Blackmon*, 123 Ga. App. 128, 179 S.E.2d 657 (1970).

When commissioner must invoke formal procedures to gain access to tax information. — Only when a dealer refuses to allow on-site examination of records, the most expeditious and least disruptive way to conduct an audit, need the commissioner invoke the formal notice to produce records, or to subpoena employees, in order to gain information from which the dealer can make a reasonably accurate assessment. *Anderson v. Blackmon*, 123 Ga. App. 128, 179 S.E.2d 657 (1970).

Hearing not required when tax records known to be insufficient. — This section sets out the procedures which must be exhausted before the commissioner can make an assessment without regard to the taxpayer's records, but does not require a useless notice and hearing

when the dealer voluntarily opened records to the field auditors, the records were found insufficient, and the commissioner, with the taxpayer's knowledge, resorted to additional sources of information to compute the tax liability. *Anderson v. Blackmon*, 123 Ga. App. 128, 179 S.E.2d 657 (1970).

Burden of going forward with evidence. — When a taxpayer attacks the legality of a tax levy by affidavit of illegality, the commissioner makes out a *prima facie* case by introducing the tax fi. fa., and the burden of going forward with evidence shifts to the defendant in fi. fa. *Fowler v. Strickland*, 243 Ga. 30, 252 S.E.2d 459, cert. denied, 444 U.S. 827, 100 S. Ct. 53, 62 L. Ed. 2d 35 (1979).

Effect of the language of Ga. L. 1951, p. 360, § 18 and Ga. L. 1951, p. 360, § 16 is to shift to the taxpayer the burden of going forward with evidence to dispute the correctness of an assessment made thereunder. *Fowler v. Strickland*, 243 Ga. 30, 252 S.E.2d 459, cert. denied, 444 U.S. 827, 100 S. Ct. 53, 62 L. Ed. 2d 35 (1979).

Declaratory judgment as to taxability affords no relief from audit. — Declaratory judgment as to taxability under Ga. L. 1951, p. 360, § 18 will not relieve the taxpayer from an audit of the taxpayer's books under Ga. L. 1951, p. 360, § 16, Ga. L. 1951, p. 360, § 17, or Ga. L. 1951, p. 360, § 18. *Undercoffer v. Eastern Air Lines*, 221 Ga. 824, 147 S.E.2d 436 (1966).

OPINIONS OF THE ATTORNEY GENERAL

Purpose of notice and hearing. — Purpose of the notice and hearing is dual. First, it is primarily to afford the taxpayer or dealer an opportunity to be heard and give evidence relating to the amount of tax due and the dealer's compliance with the law. Secondly, its purpose is to give the commissioner an opportunity to acquire such additional information relating to the violation as may be made available to

the commissioner in such hearing before finally assessing additional taxes. 1954-56 Op. Att'y Gen. p. 833.

Legislative intent as to power to assess delinquent taxpayers. — General Assembly intended that in any case where the dealer fails to file a return or to appear in response to the ten days' notice or, having appeared, fails to produce records showing the true amount of the tax

due, the commissioner is authorized after the expiration of the ten days' notice in the case where the dealer fails to appear or immediately after the hearing, if the dealer does appear, to make an assessment of any tax found to be due based on the best information available to the commissioner. 1954-56 Op. Att'y Gen. p. 833.

When notice and hearing available.

— Wording of this section is broad enough to require that in all cases when for any reason whatever the commissioner or the department shall determine that a dealer has failed to make or file a return, or has rendered a false or fraudulent return, or has otherwise failed to comply with Ga. L. 1951, p. 360, the dealer should be given ten days' written notice to appear before the commissioner or the commissioner's assistant and to produce such books, records, and papers relating to the amount of tax due as the commissioner may deem

pertinent, and be required to give testimony relating to such failure to comply with the provisions of Ga. L. 1951, p. 360, and only after such ten days' notice may an assessment be made. 1954-56 Op. Att'y Gen. p. 833. But see *Anderson v. Blackmon*, 123 Ga. App. 128, 179 S.E.2d 657 (1970) (dispensing with notice and hearing where they would be useless).

Protest procedures inapplicable. —

It is manifest that Ga. L. 1937-38, Ex. Sess., p. 77, § 29 is applicable only to those cases when the law requires the commissioner to give the taxpayer an opportunity to protest the assessment. Ga. L. 1951, p. 360 does not contain any requirement that the taxpayer be given an opportunity to protest. Therefore, the General Assembly did not intend that such protest procedure should be applicable to sales taxes. 1954-56 Op. Att'y Gen. p. 833.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 212 et seq.

48-8-56. Period of delinquency of unpaid taxes; issuance of fi. fa. for collection.

The tax imposed by this article shall become delinquent for each month after the twentieth day of each succeeding month during which it remains unpaid. The commissioner may, and, when any tax becomes delinquent under this article, shall, issue a fi. fa. for the collection of the tax, interest, and penalty from each delinquent taxpayer, provided that the commissioner may transmit such a fi. fa. electronically. (Ga. L. 1951, p. 360, § 19; Ga. L. 1952, p. 334, § 2; Code 1933, § 91A-4529, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1997, p. 734, § 8.)

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 216.

C.J.S. — 85 C.J.S., Taxation, §§ 1160 et seq., 1216 et seq.

48-8-57. Furnishing of bond by chronically delinquent or defaulting dealers; amount; sale at public auction of securities for collection of taxes due; notice to dealer or depositor by mail or personal service.

(a) The commissioner may require any dealer whom the commissioner finds, after notice and the opportunity for a hearing, to have been chronically delinquent or chronically in default under this article to execute and file with the commissioner a good and valid bond with a surety company authorized to do business in this state, or may require legal securities, in an amount of not less than \$1,000.00 nor more than \$10,000.00 as determined by the commissioner and in the manner deemed proper by the commissioner.

(b) The commissioner may sell any security deposited with him pursuant to this article at public auction if it is deemed necessary to do so in order to recover any tax or any amount required to be collected plus penalty and interest due. Notice of the sale may be served upon the delinquent dealer either in person or by mail or upon the person who deposited the security either in person or by mail. If the service is made by mail, it shall be in the manner prescribed for service of notice of assessment and shall be addressed to the person at his address as it appears in the records of the commissioner. If service is made other than by mail, notice of sale may be served personally by any duly authorized agent of the commissioner. (Ga. L. 1974, p. 407, § 1; Code 1933, § 91A-4527, enacted by Ga. L. 1978, p. 309, § 2.)

48-8-58. Property sold returned to dealer by purchaser; “return allowance” defined; credit for tax payments; deduction of return allowance; claim for refund of tax credit by retired dealer; forms; effect of failure to secure forms.

(a)(1) As used in this subsection, the term “return allowance” means the amount of the sales price or purchase price refunded by the dealer to the purchaser in cash or credit. No credit shall be allowed to the dealer under this subsection for taxes collected by such dealer from the purchaser unless the taxes collected have been returned by the dealer to the purchaser.

(2) When property sold is subsequently returned by agreement to the dealer by the purchaser, the dealer shall be entitled to credit for the tax imposed by this article with respect to the return allowance, in the manner prescribed by the commissioner, as follows:

(A) The dealer in the original return for the taxable period in which the return of the property is allowed may deduct from the dealer’s gross sales the amount of the return allowance; or

(B) When a dealer has retired from business and has filed a final return, a claim for refund of the tax for which the dealer would be entitled to credit under this subsection may be filed within the time and in the manner prescribed under Code Section 48-2-35.

(b) The commissioner shall make available to dealers all necessary forms for filing returns and instructions to ensure a full collection from dealers and an accounting for the taxes due. Failure of any dealer to secure the commissioner's forms shall not relieve the dealer from the payment of the tax at the time and in the manner provided in this article.

(c) The commissioner shall promulgate any rules and regulations necessary to implement this Code section. (Ga. L. 1951, p. 360, § 21; Ga. L. 1976, p. 341, § 1; Code 1933, § 91A-4530, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2006, p. 200, § 5/HB 1310; Ga. L. 2010, p. 662, § 16/HB 1221.)

48-8-59. Dealer's certificate of registration; one license for all operations of single business in state; application for certificate; contents; conditions for valid certificate; renewal fee after revocation or suspension of certificate.

(a)(1) Every person desiring to engage in or conduct business as a seller or dealer in this state shall file with the commissioner an application for a certificate of registration for each place of business.

(2) Each person whose business extends into more than one county shall be required to secure only one certificate of registration under this article. The certificate of registration shall cover all operations of the company throughout this state.

(b) Every application for a certificate of registration shall be made upon a form prescribed by the commissioner and shall contain the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the commissioner may require. Except for sellers or dealers who register with the Streamlined Sales Tax Governing Board, the application shall be signed:

(1) If the owner is an individual, by the individual;

(2) In the case of an association or partnership, by a member or partner; or

(3) In the case of a corporation, by an executive officer or some other person specifically authorized by the corporation to sign the application. Written evidence of this authority to sign shall be attached to the application.

(c) When the required application has been made, the commissioner shall issue to the applicant a separate certificate of registration for each place of business within the state. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated in the certificate. The certificate shall be conspicuously displayed at all times at the place for which the certificate is issued.

(d) A seller whose certificate of registration has been previously suspended or revoked shall pay the commissioner a fee of \$1.00 for the renewal or issuance of a certificate of registration. (Ga. L. 1951, p. 360, § 24; Code 1933, § 91A-4532, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2010, p. 662, § 17/HB 1221.)

Cross references. — State agencies number for contracting vendors, responsibility to provide registration § 50-5-82.

JUDICIAL DECISIONS

Application form is not a “rule”. — An “ST-1 form,” which corporations are required by the department of revenue to use when applying for a certificate of registration, is not a “rule” within the purview of O.C.G.A. § 50-13-10, governing actions for declaratory judgment on the validity of rules. *Roy E. Davis & Co. v. Department of Revenue*, 256 Ga. 709, 353 S.E.2d 195 (1987).

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 35 et seq. **ALR.** — Recovery of sales taxes paid on bad debts, 38 ALR6th 255.
C.J.S. — 53 C.J.S., Licenses, §§ 51, 58 et seq.

48-8-60. Engaging in business as seller without certificate of registration required by Code Section 48-8-59; penalty.

(a) It shall be unlawful for any person to engage in business as a seller in this state without a certificate of registration as required by Code Section 48-8-59 after a certificate of registration has been suspended or revoked.

(b) Each officer of a corporation which engages in business in violation of subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1951, p. 360, § 24; Code 1933, § 91A-9942, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 75.

48-8-61. Application for certificate of registration by importing dealers; filing of returns and payment of use tax on imported tangible personal property.

Dealers who import or cause to be imported tangible personal property from other states or foreign countries for use or consumption or for storage for use or consumption in this state, if not already registered as dealers under Code Section 48-8-59, shall at the time and in the manner required by rules and regulations of the commissioner obtain from the commissioner a certificate of registration and shall file returns and pay the applicable use tax on the tangible personal property. (Ga. L. 1960, p. 989, § 1; Code 1933, § 91A-4532.1, enacted by Ga. L. 1979, p. 5, § 96A.)

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 35 et seq. **C.J.S.** — 53 C.J.S., Licenses, § 64.

48-8-62. Revocation or suspension of certificate of registration for violation of article or regulation; notice; hearing.

Whenever any person fails to comply with any provision of this article or with any rule or regulation of the commissioner relating to this article, the commissioner, upon hearing, after giving the person ten days' notice in writing specifying the time and place of hearing and requiring him to show cause why his certificate of registration should not be revoked, may revoke or suspend any one or more of the certificates of registration held by the person. The notice may be served in person or by registered or certified mail or statutory overnight delivery directed to the last known address of the person. (Ga. L. 1951, p. 360, § 24; Code 1933, § 91A-4533, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that that Act shall apply with respect to notices delivered on or after July 1, 2000.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 56, 60, 61

48-8-63. “Nonresident subcontractor” defined; payment of tax by contractors; liability of seller; withholding of payments due subcontractor; rate; bond; exemption of property unconsumed; property deemed consumed; property of the state or of the United States.

(a) As used in this Code section, the term “nonresident subcontractor” means a person who does not have a bona fide place of business in Georgia through the maintaining of a permanent domicile or business facility engaged in contracting real property work and who contracts with a prime or general contractor to perform all or any part of the contract of the prime or general contractor or who contracts with a subcontractor who has contracted to perform any part of the contract entered into by the prime or general contractor.

(b) Each person who orally, in writing, or by purchase order contracts to furnish tangible personal property and to perform services under the contract within this state shall be deemed to be the consumer of the tangible personal property and shall pay the sales tax imposed by this article at the time of the purchase. Any person so contracting who fails to pay the sales tax at the time of the purchase or at the time the sale is consummated outside the limits of this state shall be liable for the payment of the sales or use tax. This Code section shall not relieve the dealer who made the sale from such dealer’s liability to collect and pay the tax on purchases by a contractor.

(c) Each person who contracts to perform services in this state and who is furnished tangible personal property for use under the contract by the person, or such person’s agent or representative, for whom the contract is to be performed, when a sales or use tax has not been paid to this state by the person supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal property so used and shall pay a use tax based on the fair market value of the tangible personal property so used irrespective of whether any right, title, or interest in the tangible personal property becomes vested in the contractors.

(d) Each person who orally, in writing, or by purchase order contracts to perform any service the principal part of which is the furnishing of machinery which will not be under the exclusive control of the contractor shall be liable to collect a sales tax on the rental value of the machinery so used. If labor and other charges are not separated from the rental charge, the person so contracting shall be liable to collect a sales tax on the entire contract price.

(e)(1) Any subcontractor who enters into a construction contract with a general or prime contractor shall be liable under this article as a general or prime contractor. Any general or prime contractor who

enters into any construction contract or contracts with any nonresident subcontractor, where the total amount of such contract or contracts between such general or prime contractor and any nonresident subcontractors on any given project equals or exceeds \$250,000.00, shall withhold 2 percent of the payments due the nonresident subcontractor in satisfaction of any sales or use taxes owed this state.

(2) The prime or general contractor shall withhold payments on all contracts that meet the criteria specified in paragraph (1) of this subsection until the nonresident subcontractor furnishes such prime or general contractor with a certificate issued by the commissioner showing that all sales taxes accruing by reason of the contract between the nonresident subcontractor and the general or prime contractor have been paid and satisfied. If the prime or general contractor for any reason fails to withhold 2 percent of the payments due the nonresident subcontractor under their contract, such prime or general contractor shall become liable for any sales or use taxes due or owed this state by the nonresident subcontractor.

(f) Whenever a nonresident subcontractor holding a contract with a general or prime contractor has posted with the commissioner either a good and valid bond with a surety company authorized to do business in this state or legal securities in an amount of not less than \$5,000.00 nor more than \$50,000.00, as determined by the commissioner, conditioned that all sales and use taxes which may accrue to this state on account of the execution of contracts that meet the criteria established in paragraph (1) of subsection (e) of this Code section by nonresident subcontractors will be paid when due, no general or prime contractor shall withhold any sums due the nonresident subcontractor under their contract with respect to sales and use taxes.

(g) Nothing contained in this Code section shall be construed to impose any sales or use tax with respect to the use of tangible personal property owned by the United States in the performance of contracts with the United States when the property is not actually used up and consumed in the performance of the contract. Tangible personal property incorporated into real property construction which loses its identity as tangible personal property shall be deemed to be used up and consumed within the meaning of this subsection.

(h)(1) Nothing contained in this Code section shall be construed to impose any sales or use tax with respect to the use of tangible personal property owned by the State of Georgia, the University System of Georgia, or any county, municipality, local board of education, or other political subdivision of this state in the performance of contracts with such entities when the property is not actually used up and consumed in the performance of the contract. Tangible personal

property incorporated into real property construction which loses its identity as tangible personal property shall be deemed to be used up and consumed within the meaning of this subsection. Any governmental entity which furnishes tangible personal property to a contractor for incorporation into a construction, renovation, or repair project conducted pursuant to a contract with such governmental entity shall issue advance written notice to such contractor of the amount of tax owed for such tangible personal property. The failure of the governmental entity to issue such advance written notice to the contractor of such tax liability shall render such governmental entity liable for such tax.

(2) This subsection shall not apply with respect to the use of tangible personal property owned by the United States.

(i) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section. (Ga. L. 1955, p. 389, §§ 1, 2; Code 1933, § 91A-4536, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 97; Ga. L. 1989, p. 62, § 9; Ga. L. 2000, p. 411, § 2; Ga. L. 2005, p. 498, § 1/HB 306; Ga. L. 2006, p. 59, § 2/HB 111; Ga. L. 2012, p. 774, § 1/HB 932.)

The 2012 amendment, effective July 1, 2012, in subsection (e), substituted “, shall withhold 2 percent” for “shall withhold up to 4 percent” in the last sentence of paragraph (e)(1), and substituted “withhold 2 percent” for “withhold up to 4 percent” in the last sentence of paragraph (e)(2).

Law reviews. — For survey article on recent developments in Georgia state and local taxation, see 34 Mercer L. Rev. 400 (1982). For annual survey of construction law, see 57 Mercer L. Rev. 79 (2005).

JUDICIAL DECISIONS

Taxation of materials used by building contractor. — When building materials are purchased by a contractor to be used in the construction, improvement, or repair of the house of the party who engages the contractor, such materials are not bought for the purpose of resale within the meaning of Ga. L. 1951, p. 360, so as to be exempt from sales tax. *Troup Roofing Co. v. Dealers Supply Co.*, 91 Ga. App. 880, 87 S.E.2d 358 (1955).

Exclusive control of dock cranes. — Dock cranes furnished by a port authority to a stevedore were under the “exclusive control” of the port authority within the meaning of O.C.G.A. § 48-8-63(c), when the port authority retained total operational control over the cranes. *Southeast-*

ern Maritime Co. v. Collins, 258 Ga. 725, 374 S.E.2d 197 (1988).

No exemption for agent of tax exempt entity. — Taxpayer, a for-profit corporation based in Illinois, that made purchases as an agent for a hospital authority, a tax exempt entity, was liable for sales and use taxes under O.C.G.A. § 48-8-63(b) or (c). There was no derivative exemption based upon the taxpayer’s relationship with the authority. *Resourcing Servs. Atlanta, LLC v. Ga. Dep’t of Revenue*, 288 Ga. App. 532, 654 S.E.2d 649 (2007).

Cited in *Strickland v. Sperry Rand Corp.*, 248 Ga. 535, 285 S.E.2d 1 (1981); *Strickland v. W.E. Ross & Sons*, 251 Ga. 324, 304 S.E.2d 719 (1983).

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Taxation of raw materials from roadway used by contractor in constructing highway. — When contractor on highway project uses raw materials from roadway in construction of highway, those materials are not subject to sales and use tax, but when the subcontractor processes materials for the contractor's use, such processed materials are subject to tax. 1962 Op. Att'y Gen. p. 559.

Sales tax on materials must be paid by contractor even though state work is being done, when contract is for services including materials. 1962 Op. Att'y Gen. p. 560.

Use tax on property furnished to contractor by government. — When a government contractor under a fixed-price type maintenance, overhaul, and modifi-

cation contract uses up and consumes government furnished property in performing the contract, although having previously purchased such property as agent for the government, the contractor becomes liable for the use tax based upon the fair market value of the property so used up and consumed. 1962 Op. Att'y Gen. p. 547.

Materials purchased for construction of a church are subject to sales tax. 1957 Op. Att'y Gen. p. 325.

Construction with other bond provisions. — Minimum requirements of the bond called for in former Code 1933, Ch. 92-4 do not meet the minimum requirements of this section, and a qualifying subcontractor should, therefore, post both bonds. 1960-61 Op. Att'y Gen. p. 545.

RESEARCH REFERENCES

C.J.S. — 84 C.J.S., Taxation, §§ 162 et seq., 462 et seq., 520.

ALR. — Computer software or printout

transactions as subject to state sales or use tax, 36 ALR5th 133.

48-8-64. Time for assessment.

The amount of taxes imposed by this article shall be assessed within the time periods specified in Code Section 48-2-49. (Ga. L. 1951, p. 360, § 26; Ga. L. 1953, Jan.-Feb. Sess., p. 184, § 1; Ga. L. 1960, p. 941, §§ 1, 2; Ga. L. 1960, p. 1007, § 1; Code 1933, § 91A-4535, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 29; Ga. L. 1985, p. 1350, § 3.)

JUDICIAL DECISIONS

Period of limitations as to sums not required to be assessed. — As to sums not required to be assessed, the period of limitations is seven years from the time when a fi. fa. could first have been issued. *Oxford v. Jessup*, 101 Ga. App. 612, 115 S.E.2d 434 (1960).

Assessment of proper, accepted returns does not change limitation of actions as to them. — Amounts due on returns properly made and accepted by the commissioner need not be assessed. The fact that the amounts are assessed does not change the limitation of action as

to them. *Oxford v. Jessup*, 101 Ga. App. 612, 115 S.E.2d 434 (1960).

Section inapplicable to returns properly made and accepted. — Section has no application to the amounts due by a taxpayer ascertained by returns properly made and accepted by the commissioner, whether the amounts so shown to be due are sought to be collected by assessment or execution. *Oxford v. Jessup*, 101 Ga. App. 612, 115 S.E.2d 434 (1960).

Statute of limitations does not extinguish debt itself. — Statute of limitation contained in Ga. L. 1951, p. 360

operates only to bar the remedy, not to extinguish the tax debt itself. *Hawes v. Shuman*, 125 Ga. App. 117, 186 S.E.2d 582 (1971).

Payment of debt after period of limitations is expired. — Person who pays a debt after the running of the statute of limitations has expired cannot sue to recover the debt back because of this fact. *Hawes v. Shuman*, 125 Ga. App. 117, 186 S.E.2d 582 (1971).

Voluntary payment of illegal taxes cannot be recovered. *Hawes v. Shuman*, 125 Ga. App. 117, 186 S.E.2d 582 (1971).

Comparable income tax provisions. — Laws cited by this section were intended to serve the same function as to sales tax as acts cited in former Code 1933, § 92-3303 were intended to serve as to the income tax. *Oxford v. Jessup*, 101 Ga. App. 612, 115 S.E.2d 434 (1960).

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, §§ 231, 234 et seq.

C.J.S. — 84 C.J.S., Taxation, §§ 462 et seq., 520, 530 et seq.

ALR. — Construction and application of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 ALR 107.

48-8-65. Engaging in business by nonresident dealer as appointment of Secretary of State as attorney in fact for service of process; circumstances and events constituting engaging in business by nonresident dealer; venue; perfection of service of process.

(a) For the purpose of this Code section, the term “processes of law” means any notice, demand, proposed assessment, final assessment, direction, ruling, or order issued by the commissioner or other official of the department as provided by law in the administration of the tax laws of this state. When service in the hands of the Secretary of State or other action is required of the Secretary of State, it shall be sufficient compliance with this Code section if the service or other action is done by a deputy of the Secretary of State. When action is required of the commissioner, it shall be sufficient compliance with this Code section if the action is done by his deputy or attorney.

(b)(1) The fact of engaging in some act or activity within this state giving rise to a tax liability or obligation under this article shall constitute an appointment by the person engaging in the act or activity of the Secretary of State or his successor in office to be the true and lawful attorney in fact of the person upon whom may be served, while the act or activity is being engaged in or for as long as the statute of limitations prescribed for the tax liability or obligation remains open, any processes of law for the determination and enforcement of the tax liability or obligation and shall signify the agreement of the person engaging in the act or activity that any process of law served upon the Secretary of State shall be of the same legal force and validity as if served upon the person personally.

(2) For the purposes of this subsection, a person engages in some act or activity within this state giving rise to a tax liability or obligation when the person:

(A)(i) Performs or carries on any employment, trade, business, profession, or any other act or activity for financial gain or profit within this state including, but not limited to, the rental of real or personal property located within this state or for use within this state and the sale, exchange, or other disposition of tangible or intangible property having a situs in this state;

(ii) By reason of any act or activity performed or carried on within this state comes within the definition of “dealer” as defined in Code Section 48-8-2; or

(iii) Otherwise operates personally or through partners, employees, agents, or otherwise in this state so as to incur any liability or obligation with respect to the payment or collection of taxes imposed by this article; and

(B)(i) Does not maintain a residence, known place of business, or known agent to receive service of process; or

(ii) If he has maintained in this state a known place of residence, place of business, or agent, the known place of residence, business, or agent has been discontinued.

(c) Venue in any action or proceeding in which the Secretary of State by reason of subsection (b) of this Code section is made an attorney in fact for service of process shall be in Fulton County. The service in such a case shall be perfected by leaving a copy of the process in the hands of the Secretary of State and by sending by registered or certified mail or statutory overnight delivery a copy of the process to the person if his address is known and by attaching to the original process an affidavit of compliance with this Code section. When it appears from the affidavit that a copy of process has been mailed by the commissioner to a known address, a second mailing shall not be required of the Secretary of State to the same address, but the Secretary of State shall keep the copy received by him on file as a source of information for any inquiry from the person for whom the Secretary of State is attorney in fact, concerning the person's tax liabilities and obligations incident to the person's taxable acts or activities within this state. (Ga. L. 1957, p. 654, §§ 1-3; Code 1933, § 91A-4537, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that this act shall apply with respect to notices delivered on or after July 1, 2000.

RESEARCH REFERENCES

C.J.S. — 72 C.J.S., Process, § 76.

48-8-66. Penalties for failure to file return or make payment in full; exception for providential cause; penalty for willful failure to file return or for false or fraudulent return.

When any dealer fails to make any return or to pay the full amount of the tax required by this article, there shall be imposed, in addition to other penalties provided by law, a penalty to be added to the tax in the amount of 5 percent or \$5.00, whichever is greater, if the failure is for not more than 30 days and an additional 5 percent or \$5.00, whichever is greater, for each additional 30 days or fraction of 30 days during which the failure continues. The penalty for any single violation shall not exceed 25 percent or \$25.00 in the aggregate, whichever is greater. If the failure is due to providential cause shown to the satisfaction of the commissioner in affidavit form attached to the return and remittance is made within ten days of due date, the return may be accepted exclusive of penalties and interest. In the case of a false or fraudulent return or of a failure to file a return where willful intent exists to defraud the state of any tax due under this article, a penalty of 50 percent of the tax due shall be assessed. (Ga. L. 1951, p. 360, § 16; Ga. L. 1953, Jan.-Feb. Sess., p. 196, § 1; Ga. L. 1964, p. 57, § 1; Ga. L. 1974, p. 409, § 1; Ga. L. 1975, p. 162, § 1; Code 1933, § 91A-4523, enacted by Ga. L. 1978, p. 309, § 2.)

JUDICIAL DECISIONS

Taxpayer not liable when an innocent and ignorant participant in fraudulent scheme. — Court is authorized to find that a taxpayer is not liable for penalties based on a taxpayer's participation in the filing of a false or fraudulent return, when the taxpayer unlawfully but innocently and ignorantly sought to settle a tax debt with a representative of the state for less than the amount due, and did not contemplate or participate in the

filing of false and fraudulent returns on the taxpayer's behalf by the state agents, and did not conspire with the state agents in a scheme whereby the agents were to rob the state of the amount paid in an effort to settle the debt, and the taxpayer honestly believed the state agents had authority to make the settlement and the state would receive the amount paid in settlement. *Oxford v. Jessup*, 101 Ga. App. 612, 115 S.E.2d 434 (1960).

OPINIONS OF THE ATTORNEY GENERAL

It is mandatory that penalties be imposed against a person failing to pay state sales taxes, notwithstanding the fact

that a return was made. 1952-53 Op. Att'y Gen. p. 236.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, §§ 220 et seq., 230, 238. **C.J.S.** — 85 C.J.S., Taxation, § 1712 et seq.

48-8-67. Distribution of certain unidentifiable sales and use tax proceeds; limitations; powers and duties of state revenue commissioner.

(a) As used in this Code section, the term “authorized recipient” means the state, special districts, counties, or municipalities, or any combination thereof, as determined by general law, applicable local constitutional amendment, or Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the “Metropolitan Atlanta Rapid Transit Authority Act of 1965,” which specifies the entities to whom the commissioner is directed to distribute the proceeds of sales and use taxes.

(b) When a dealer makes a return with insufficient information to identify proceeds as being attributable to retail sales, retail purchases, rentals, storage, use, or consumption of tangible personal property or services occurring within a particular special district or particular county, the commissioner shall make reasonable efforts to obtain the information needed to make a distribution of those proceeds. When the information cannot be obtained, the commissioner shall allocate unidentifiable proceeds among the authorized recipients in the same proportion as the proceeds of the sales and use taxes are otherwise allocated and distributed to the authorized recipients. Each allocation of unidentifiable proceeds shall be calculated by determining each authorized recipient's pro rata share of identifiable proceeds collected during the same period of time in which the unidentifiable proceeds to be allocated were collected. Each authorized recipient's pro rata share of the unidentifiable proceeds for each such collection period shall be the same as that authorized recipient's pro rata share of the identifiable proceeds for the same collection period.

(c) The initial allocation of such unidentifiable proceeds shall be distributed in the manner consistent with subsection (b) of this Code section before July 1, 1998, and such allocation shall include all amounts of such unidentifiable proceeds that have been collected subsequent to June 30, 1997, and prior to April 1, 1998, and which have not been distributed by the commissioner at the time of the initial distribution. Such initial distribution of unidentifiable proceeds to an authorized recipient shall be made separate and distinct from the regular distribution of identifiable proceeds to such authorized recipient. In lieu of interest earned on such unidentifiable proceeds, an amount equivalent to 5 percent of the initial distribution amount shall

be allocated and distributed by the commissioner in a similar manner, if funds are specifically appropriated for such purpose.

(d) Following the initial allocation under subsection (c) of this Code section, allocations of unidentifiable proceeds shall be made by the commissioner according to a schedule provided for by rules and regulations of the commissioner but in no event less often than twice per year. Any such subsequent distribution of unidentified proceeds to an authorized recipient shall be made separate and distinct from the regular distribution of identifiable proceeds to such authorized recipient.

(e) Information regarding proceeds distributed to authorized recipients pursuant to this Code section shall be identified by the commissioner, and such information shall be made available upon request.

(f) The department shall at the time of the first distribution of such unidentifiable proceeds provide each authorized recipient with written notice advising each authorized recipient that negotiation of the first distribution shall constitute a release and full accord and satisfaction for any and all refund requests or claims with respect to any sales and use tax collected prior to April 1, 1998, which the authorized recipient has or may have for recovery of any such tax funds. Negotiation of the first distribution shall also constitute full and complete acceptance of all the terms and conditions set forth in this Code section and shall bar any challenges to this Code section.

(g) The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient distribution of state and local sales and use tax proceeds in accordance with this Code section. (Code 1981, § 48-8-67, enacted by Ga. L. 1998, p. 769, § 1; Ga. L. 1999, p. 81, § 48; Ga. L. 2001, p. 984, § 18; Ga. L. 2005, p. 159, § 24/HB 488; Ga. L. 2009, p. 723, § 1/HB 181; Ga. L. 2011, p. 47, § 2/HB 322.)

The 2011 amendment, effective April 27, 2011, deleted subsection (h), which read: "The authority of the commissioner to make distributions pursuant to this Code section shall cease on December 31, 2011, unless such authority is extended by a subsequent general Act of the General Assembly."

Editor's notes. — Ga. L. 2005, p. 159, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 294 (2001).

JUDICIAL DECISIONS

Constitutionality. — Court would reject the contention that O.C.G.A. § 48-8-67 is unconstitutional, either as a

retrospective application of law which alters vested rights, or as a breach of an implied contract between DeKalb County

and the State of Georgia. DeKalb County v. State, 270 Ga. 776, 512 S.E.2d 284 (1999).

48-8-68. Relief from liability in certain circumstances for failure to collect tax at new rate.

If the sales tax rate changes with less than 30 days between the enactment of the rate change and the effective date of such rate change, sellers shall be relieved of liability for failing to collect tax at the new rate if:

(1) The seller collected tax at the immediately preceding effective rate; and

(2) The seller's failure to collect at the newly effective rate does not extend beyond 30 days after the date of enactment of the new rate.

The provisions of this Code section do not apply if the commissioner establishes that the seller fraudulently failed to collect at the new rate or solicits purchasers based on the immediately preceding effective rate. (Code 1981, § 48-8-68, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

48-8-69. Purchases from printed catalogs; local jurisdiction boundary changes.

(a) Any local sales tax rate changes made pursuant to this chapter shall apply to purchases from printed catalogues wherein the purchaser computed the tax based upon local tax rates published in the catalogue only on the first day of a calendar quarter after a minimum of 120 days' notice to sellers.

(b) For sales and use tax purposes only, local jurisdiction boundary changes are effective only on the first day of a calendar quarter after a minimum of 60 days' notice to sellers. (Code 1981, § 48-8-69, enacted by Ga. L. 2010, p. 662, § 18/HB 1221; Ga. L. 2013, p. 141, § 48/HB 79.)

Effective date. — This Code section became effective January 1, 2011.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in subsection (a).

Law reviews. — For annual survey of law on real property, see 62 Mercer L. Rev. 283 (2010).

48-8-70. Determination of ZIP Code designation applicable to particular purchases; rebuttable presumption of seller's due diligence.

If a nine-digit ZIP Code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit ZIP Code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit ZIP Code area. For the purposes of this Code section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the nine-digit ZIP Code designation by utilizing software approved by the Streamlined Sales Tax Governing Board that makes this designation from the street address and the five-digit ZIP Code applicable to a purchase. (Code 1981, § 48-8-70, enacted by Ga. L. 2010, p. 662, § 18/HB 1221; Ga. L. 2013, p. 141, § 48/HB 79.)

Effective date. — This Code section 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in this Code section.

The 2013 amendment, effective April

48-8-71. Immunity from liability for reliance upon erroneous data provided by the state on tax rates, local boundaries, and taxing jurisdiction assignments.

Sellers and certified service providers shall not be liable for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by this state on state and local tax rates, local boundaries, and taxing jurisdiction assignments. (Code 1981, § 48-8-71, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

48-8-72. Over-collected sales or use tax.

(a) A cause of action against a seller for over-collected sales or use taxes does not accrue until a purchaser has provided written notice to the seller and the seller has had 60 days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

(b) In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice if, in the collection of such sales or use taxes, the seller:

(1) Uses either a provider or a system, including a proprietary system, that is certified by the state; and

(2) Has remitted to the state all taxes collected less any deductions, credits, or collection allowances. (Code 1981, § 48-8-72, enacted by Ga. L. 2010, p. 662, § 18/HB 1221; Ga. L. 2013, p. 141, § 48/HB 79.)

Effective date. — This Code section became effective January 1, 2011.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modern-

ize, and correct the Code, revised punctuation in the introductory language of subsection (b).

48-8-73. Immunity from liability for reliance upon erroneous taxability matrix data provided by the state.

A seller and certified service provider are relieved of liability for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by this state in the taxability matrix. (Code 1981, § 48-8-73, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

48-8-74. Effective date for sales tax rate change.

The effective date for a sales tax rate change for services covering a period starting before and ending after the statutory effective date shall be as follows:

(1) For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date; and

(2) For a rate decrease, the new rate shall apply to bills rendered on or after the effective date. (Code 1981, § 48-8-74, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

48-8-75. Purchaser's immunity from liability for failure to pay correct sales tax under certain circumstances.

(a) A purchaser shall be relieved from liability for penalty for having failed to pay the correct amount of sales or use tax if:

(1) A purchaser's seller or certified service provider relied on erroneous data provided by this state on tax rates, boundaries, taxing

jurisdiction assignments, or in the taxability matrix completed by this state;

(2) A purchaser holding a direct pay permit relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by this state;

(3) A purchaser relied on erroneous data provided by this state in the taxability matrix completed by this state; or

(4) A purchaser using databases provided by this state relied on erroneous data provided by this state on tax rates, boundaries, or taxing jurisdiction assignments.

(b) A purchaser shall be relieved from liability for tax and interest for having failed to pay the correct amount of sales or use tax in the circumstances described in subsection (a) of this Code section provided that, with respect to reliance on the taxability matrix completed by this state, such relief is limited to the state's erroneous classification in the taxability matrix of terms included in the Library of Definitions as "taxable" or "exempt," "included in sales price," or "excluded from sales price" or "included in the definition" or "excluded from the definition." (Code 1981, § 48-8-75, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section became effective January 1, 2011. to Code Section 28-9-5, in 2012, "in" was inserted following "described" in subsection (b).

Code Commission notes. — Pursuant

48-8-76. Compliance with terms of Streamlined Sales and Use Tax Agreement; relief from certain obligations.

(a) A seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the Streamlined Sales and Use Tax Agreement is relieved from the obligation to remit uncollected sales tax provided the seller was not so registered in this state in the twelve-month period preceding the effective date of this state's participation in the Streamlined Sales and Use Tax Agreement.

(b) The relief provided in subsection (a) of this Code section precludes an assessment for uncollected or unpaid sales together with penalty or interest for sales made during the period the seller was not registered in this state, provided that the registration occurs within 12 months of the effective date of this state's participation in the Streamlined Sales and Use Tax Agreement.

(c) The relief provided in subsection (a) of this Code section shall not be available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which

audit is not yet finally resolved including any related administrative and judicial processes.

(d) The relief provided in subsection (a) of this Code section shall not be available for sales or use taxes already paid or remitted to this state or to taxes collected by the seller.

(e) The relief provided in subsection (a) of this Code section is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least 36 months. The statute of limitations applicable to asserting a tax liability is tolled during this 36 month period.

(f) The relief provided in subsection (a) of this Code section is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer. (Code 1981, § 48-8-76, enacted by Ga. L. 2010, p. 662, § 18/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

48-8-77. Sourcing; definitions; sales of advertising and promotional direct mail and other direct mail; sales of telecommunications service.

(a) This Code section shall not be construed to impose sales and use tax on any tangible personal property or service which was not subject to such tax prior to January 1, 2011.

(b)(1) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

(A) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(B) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(C) When subparagraph (A) or (B) of this paragraph does not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(D) When subparagraph (A), (B), or (C) of this paragraph does not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(E) When subparagraph (A), (B), (C), or (D) of this paragraph does not apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(2) The lease or rental of tangible personal property, other than property identified in paragraph (3) or (4) of this subsection, shall be sourced as follows:

(A) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this subsection. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(B) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this subsection.

(C) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(3) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in paragraph (4) of this subsection, shall be sourced as follows:

(A) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property

location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(B) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this subsection.

(C) This subsection shall not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(4) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this subsection, notwithstanding the exclusion of lease or rental in paragraph (1) of this subsection. As used in this paragraph, "transportation equipment" means any of the following:

(A) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(B) Trucks and truck-tractors with a Gross Vehicle Weight Rating of 10,001 pounds or greater, trailers, semitrailers, or passenger buses that are:

(i) Registered through the International Registration Plan; and

(ii) Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(C) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(D) Containers designed for use on and component parts attached or secured on the items set forth in subparagraph (A), (B), or (C) of this paragraph.

(c) For the purposes of paragraph (1) of subsection (b) of this Code section, the terms "receive" and "receipt" mean:

(1) Taking possession of tangible personal property;

(2) Making first use of services; or

(3) Taking possession or making first use of digital goods, whichever comes first.

The terms “receive” and “receipt” shall not include possession by a shipping company on behalf of the purchaser.

(d)(1) Notwithstanding subsection (b) of this Code section, the following provisions shall apply to sales of advertising and promotional direct mail:

(A) A purchaser of advertising and promotional direct mail may provide the seller with either:

(i) A direct pay permit;

(ii) An agreement certificate of exemption claiming direct mail or other written statement approved, authorized, or accepted by the state; or

(iii) Information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients;

(B) If the purchaser provides the permit, certificate, or statement referred to in division (i) or (ii) of subparagraph (A) of this paragraph, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving advertising and promotional direct mail to which the permit, certificate, or statement applies. The purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients and shall report and pay any applicable tax due;

(C) If the purchaser provides the seller information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail where the seller has sourced the sale according to the delivery information provided by the purchaser; and

(D) If the purchaser does not provide the seller with any of the items listed in subparagraph (A) of this paragraph, the sale shall be sourced according to Section 310.A.5 of the Streamlined Sales and Use Tax Agreement. The state to which the advertising and promotional direct mail is delivered may disallow credit for tax paid on sales sourced under this paragraph.

(2) Notwithstanding subsection (b) of this Code section, the following provisions shall apply to sales of other direct mail:

(A) Except as otherwise provided in this paragraph, sales of other direct mail are sourced in accordance with subparagraph (b)(1)(C) of this Code section;

(B) A purchaser of other direct mail may provide the seller with either:

(i) A direct pay permit; or

(ii) An agreement certificate of exemption claiming direct mail or other written statement approved, authorized, or accepted by the state; and

(C) If the purchaser provides the permit, certificate, or statement referred to in paragraph (1) or (2) of this subsection, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving other direct mail to which the permit, certificate, or statement applies. Notwithstanding paragraph (1) of this subsection, the sale shall be sourced to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall report and pay applicable tax due.

(3) For purposes of this subsection, the term:

(A) "Advertising and promotional direct mail" means:

(i) Printed material that meets the definition of direct mail, under Code Section 48-8-2;

(ii) The primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. As used in this division, the term "product" means tangible personal property, a product transferred electronically, or a service.

(B) "Other direct mail" means any direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional direct mail is included in the same mailing. The term includes, but is not limited to:

(i) Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, and payroll advices;

(ii) Any legally required mailings including, but not limited to, privacy notices, tax reports, and stockholder reports; and

(iii) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational messages.

Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.

(4)(A)(i) This paragraph shall apply to a transaction characterized under this chapter as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of direct mail.

(ii) This paragraph shall not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether advertising and promotional direct mail is included in the same mailing.

(B) If a transaction is a bundled transaction that includes advertising and promotional direct mail, this subsection shall apply only if the primary purpose of the transaction is the sale of products or services that meet the definition of advertising and promotional direct mail.

(C) Nothing in this paragraph shall limit any purchaser's:

(i) Obligation for sales or use tax to any state to which the direct mail is delivered;

(ii) Right under local, state, federal, or constitutional law, to a credit for sales or use taxes legally due and paid to other jurisdictions; or

(iii) Right to a refund of sales or use taxes overpaid to any jurisdiction.

(D) This subsection applies for purposes of uniformly sourcing direct mail transactions and does not otherwise impose requirements regarding the taxation of products that meet the definition of direct mail or to the application of sales for resale or other exemptions.

(e)(1) Except for the defined telecommunications service in paragraph (3) of this subsection, the sale of telecommunications service sold on a call-by-call basis shall be sourced to:

(A) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or

(B) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunications service in paragraph (3) of this subsection, a sale of telecommunications service sold

on a basis other than a call-by-call basis shall be sourced to the customer's place of primary use.

(3) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with subsection (b) of this Code section; provided, however, that in the case of a sale of prepaid wireless calling service, the rule provided in subparagraph (b)(1)(E) of this Code section shall include as an option the location associated with the mobile telephone number.

(4) The sale of an ancillary service is sourced to the customer's place of primary use. (Code 1981, § 48-8-77, enacted by Ga. L. 2010, p. 662, § 18/HB 1221; Ga. L. 2011, p. 38, § 8/HB 168; Ga. L. 2013, p. 141, § 48/HB 79.)

Effective date. — This Code section became effective January 1, 2011.

The 2011 amendment, effective April 27, 2011, substituted “subparagraph (b)(1)(C)” for “subparagraph (l)(1)(A)” in subparagraph (d)(2)(A).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation and language throughout this Code section, and substituted “call-by-call basis shall be sourced” for “call-by-call basis, is sourced” in paragraph (e)(2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, “paragraph (1)” was substituted for “paragraph

(l)” in the last sentence of subparagraph (d)(2)(C).

Pursuant to Code Section 28-9-5, in 2013, “promotional” was substituted for “promotion” near the beginning of subparagraph (d)(4)(B).

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U.L. Rev. 217 (2011).

48-8-77.1. Certification of review software by department; relief from liability.

(a) For purposes of this Code section, the definitions as provided in Code Section 48-8-161 shall apply.

(b) The department shall review software submitted to the Streamlined Sales Tax Governing Board for certification as a Certified Automated System under Section 501 of the Streamlined Sales and Use Tax Agreement. Such review shall include a review to determine that the program accurately reflects the taxability of the product categories included in the program. Upon approval by the department, the state will certify its acceptance of the software to the Streamlined Sales Tax Governing Board.

(c) The department shall relieve certified service providers and model 2 sellers from liability to the state and local jurisdictions in the state for not collecting sales or use taxes resulting from the certified service provider or model 2 seller relying on the certification provided by the state.

(d) The department shall provide relief from liability to certified service providers for not collecting sales and use taxes in the same manner as provided to sellers under Code Section 48-8-38.

(e) If the department determines that an item or transaction is incorrectly classified as to the item or transaction's taxability, the department shall notify the certified service providers or model 2 sellers of the incorrect classification. The certified service provider or model 2 seller shall have ten days to revise the classification after receipt of notice from the department of the determination. (Code 1981, § 48-8-77.1, enacted by Ga. L. 2011, p. 38, § 9/HB 168.)

Effective date. — This Code section became effective April 27, 2011.

ARTICLE 2

JOINT COUNTY AND MUNICIPAL SALES AND USE TAX

Law reviews. — For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979). For article surveying Georgia cases in the area of local government law from June 1979 through May 1980, see 32 Mercer L. Rev. 137 (1980). For article surveying Georgia cases in the area of state and local

taxation from June 1979 through May 1980, see 32 Mercer L. Rev. 203 (1980). For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990). For annual survey of state and local taxation, see 42 Mercer L. Rev. 421 (1990).

For note, "The Local Option Sales Tax: A General Overview," see 31 Mercer L. Rev. 313 (1979).

JUDICIAL DECISIONS

Tax authorized by Ga. L. 1975, p. 984 is constitutional whether viewed as a joint county-city tax which the General Assembly could and did authorize in the exercise of the state's inherent power to tax, or viewed as a special district tax authorized by Ga. Const. 1976, Art. IX, Sec. IV, Para. II (see now Ga. Const. 1983, Art. IX, Sec. II, Para. IV). Board of Comm'rs v. Cooper, 245 Ga. 251, 264 S.E.2d 193 (1980).

Ga. L. 1975, p. 984 does not violate U.S. Const., amend. 14 or Ga. Const. 1976, Art. I, Sec. I, Para. I (see now Ga. Const. 1983, Art. I, Sec. I, Para. I). Board of Comm'rs v. Cooper, 245 Ga. 251, 264 S.E.2d 193 (1980).

Article does not violate the uniformity provision in Ga. Const. 1976, Art. I, Sec. II, Para. VII (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV). Board of

Comm'rs v. Cooper, 245 Ga. 251, 264 S.E.2d 193 (1980).

Article does not impermissibly delegate legislative authority to the localities. Board of Comm'rs v. Cooper, 245 Ga. 251, 264 S.E.2d 193 (1980).

Purpose. — Purpose of Ga. L. 1975, p. 984 is to provide a measure of ad valorem tax relief both to county and city taxpayers. City Council v. Mangelly, 243 Ga. 358, 254 S.E.2d 315 (1979).

This is a county tax, and not a state tax. City Council v. Mangelly, 243 Ga. 358, 254 S.E.2d 315 (1979).

Constitutionality. — Ga. L. 1975, p. 984 is unconstitutional in the statute's entirety and void. City Council v. Mangelly, 243 Ga. 358, 254 S.E.2d 315 (1979).

Purposes for which county may tax. — Purposes for which a county may tax

are listed in Ga. Const. 1976, Art. IX, Sec. IV, Para. II and Art. IX, Sec. V, Para. II (see now Ga. Const. 1983, Art. IX, Sec. II and Art. IX, Sec. IV), and taxation by

counties for the purpose of sharing the resulting revenue with cities does not appear in that list. *City Council v. Mangelly*, 243 Ga. 358, 254 S.E.2d 315 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Contractor who is performing work or services for the state is not exempt under Ga. L. 1979, p. 401, § 20 from local sales and use tax imposed pursuant to Ga. L. 1978, p. 309. 1980 Op. Att'y Gen. No. 80-76.

Temporary loans authorized based upon revenues received. — Revenues

received by cities and counties collected under the provisions of O.C.G.A. Art. 2, Ch. 8, T. 48 may be included as part of the "total gross income from taxes collected in the last preceding year" for purposes of Ga. Const. 1983, Art. IX, Sec. V, Para. V (temporary loans). 1988 Op. Att'y Gen. No. U88-19.

RESEARCH REFERENCES

ALR. — Validity of so-called "sales tax," 110 ALR 1485; 117 ALR 846; 128 ALR 893.

Validity and construction of statute or ordinance providing for relief of poor persons from taxes, 123 ALR 597.

Deductibility of other taxes or fees in computing excise or license taxes, 148 ALR 263; 174 ALR 1263.

Sale of building materials, supplies, or

fixtures to contractor, or his use thereof in construction or repairs, as sale at retail within tax statute or ordinance, 163 ALR 276; 171 ALR 697.

Validity and construction of provision exempting from use tax property which is "not readily obtainable" in the state, 88 ALR2d 811.

48-8-80. "Qualified municipality" defined.

As used in this article, the term "qualified municipality" means only those incorporated municipalities which impose a tax other than the tax authorized by this article and which provide at least three of the following services:

- (1) Water;
- (2) Sewage;
- (3) Garbage collection;
- (4) Police protection;
- (5) Fire protection; or

(6) Library. (Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4601, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4609, enacted by Ga. L. 1979, p. 446, § 2.)

Law reviews. — For survey article on local government law for the period from

June 1, 2002, to May 31, 2003, see 55 Mercer L. Rev. 353 (2003).

JUDICIAL DECISIONS

Cited in *Nielubowicz v. Chatham County*, 252 Ga. 330, 312 S.E.2d 802 (1984).

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., *Municipal Corporations*, § 2 et seq.

48-8-81. Creation of special districts.

Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of one of the 159 special districts. (Ga. L. 1975, p. 984, § 2; Ga. L. 1976, p. 1019, § 9; Code 1933, § 91A-4610, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 1429, § 1; Ga. L. 1979, p. 5, § 98; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4601, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 1983, p. 3, § 64.)

JUDICIAL DECISIONS

Special district created by the Local Option Sales Tax Act, O.C.G.A. § 48-8-80 et seq., is the entire county. *Nielubowicz v. Chatham County*, 252 Ga. 330, 312 S.E.2d 802 (1984).

48-8-82. Authorization of counties and municipalities to impose joint sales and use tax; rate; applicability to sales of motor fuels and food and beverages.

When the imposition of a joint county and municipal sales and use tax is authorized according to the procedures provided in this article within a special district, the county whose geographical boundary is conterminous with that of the special district and each qualified municipality located wholly or partially within the special district shall levy a joint sales and use tax at the rate of 1 percent. Except as to rate, the joint tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the tax levied pursuant to this article, except that the joint tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3. (Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4602, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, §§ 1, 2; Ga. L. 1989, p. 62, § 10; Ga. L. 1991, p. 87,

§ 3; Ga. L. 1996, p. 1, § 2; Ga. L. 2007, p. 309, § 4/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 19/HB 1221.)

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Gov-

ernment, Public Utilities, and State Government,” see 28 Ga. St. U.L. Rev. 217 (2011).

For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 190 (1992).

JUDICIAL DECISIONS

Subjects of taxation. — Local option tax is restricted to the same types of items and transactions as defined in the state sales and use tax article and is not limited to those instances in which the state tax must actually be paid. *C.W. Matthews Contracting Co. v. Collins*, 265 Ga. 448, 457 S.E.2d 171 (1995).

When a contractor purchased equip-

ment in a particular county and paid the state sales and use tax there, and later used the equipment in other counties, assessment of a local option tax on the latter use was authorized, even though such use created no state tax obligation. *C.W. Matthews Contracting Co. v. Collins*, 265 Ga. 448, 457 S.E.2d 171 (1995).

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 4.

C.J.S. — 20 C.J.S., Counties, § 369 et

seq. 64A C.J.S., Municipal Corporations, § 2225 et seq. 84 C.J.S., Taxation, § 162 et seq.

48-8-82.1. One-year increase in tax rate.

Repealed by Ga. L. 1989, p. 504, § 1, effective April 3, 1989.

Editor’s notes. — This Code section was enacted by Ga. L. 1988, p. 543, § 1.

Ga. L. 1989, p. 504, § 2, not codified by the General Assembly, provides that: “This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. If on such effective date the rate of taxation under Article 2 of Chapter 8 of Title 48 has been increased from 1 percent to 2 percent

under the authority of former Code Section 48-8-82.1, or if on such date all proceedings have been completed so as to authorize such an increase in the rate of taxation in any special district, then in such special district such increased rate of taxation shall be effective for the period of time specified by former Code Section 48-8-82.1.”

48-8-83. Special districts where joint tax to be levied.

Effective January 1, 1980, the joint tax provided in Code Section 48-8-82 shall be levied in each special district in which prior to January 1, 1980, a joint county and municipal sales and use tax was levied pursuant to Ga. L. 1975, p. 984, Section 2 (as amended by Ga. L. 1975, Ex. Sess., p. 1729, Section 1; Ga. L. 1976, p. 1019, Sections 1-13; Ga. L. 1977, p. 1008, Section 1; Ga. L. 1978, p. 1429, Sections 1-3; Ga. L. 1978, p. 1460, Sections 1-3; Ga. L. 1978, p. 1678, Section 1; Ga. L. 1978, p.

1695, Section 1; Ga. L. 1979, p. 446, Section 1) or in which a referendum election had authorized the levying of such a tax within the special district. (Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4603, enacted by Ga. L. 1979, p. 446, § 2.)

48-8-84. Resolution by governing authorities of counties and municipalities in special districts imposing tax; time.

If the imposition of the tax provided for in Code Section 48-8-82 is to be levied pursuant to Code Section 48-8-83, the governing authority of the county whose geographical boundary is conterminous with that of the special district and the governing authority of each qualified municipality located wholly or partially within the district shall each adopt a resolution on or prior to January 1, 1980, imposing the tax authorized by Code Section 48-8-82 on behalf of the county and each qualified municipality located wholly or partially within the special district. (Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4604, enacted by Ga. L. 1979, p. 446, § 2.)

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 145 et seq.

48-8-85. Referendum election to decide imposition of tax; procedure; resolution; call for election; publication; ballot; result; subsequent elections; declaration and certification of result; expense.

(a) Whenever the governing authority of any county or qualified municipality located wholly or partially within a special district in which a joint county and municipal sales and use tax was not imposed on January 1, 1980, wishes to submit to the electors of the special district the question of whether the tax authorized by Code Section 48-8-82 shall be imposed, any such governing authority shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for a referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters of the special district for approval or rejection. The election superintendent shall set the date of the election for a day not less than 30 nor more than 45 days after the date of the issuance of the call. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the

date of the election in the official organ of the county. The ballot shall have written or printed thereon the following:

“[] YES Shall a retail sales and use tax of 1 percent be levied
[] NO within the special district within _____ County?”

(b) All persons desiring to vote in favor of levying the tax shall vote “Yes,” and those persons opposed to levying the tax shall vote “No.” If more than one-half of the votes cast are in favor of levying the tax, then the tax shall be levied in accordance with this article; otherwise, the tax may not be levied, and the question of the imposition of the tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be his further duty to canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election. (Ga. L. 1975, p. 984, § 2; Ga. L. 1976, p. 1019, § 13; Code 1933, § 91A-4603, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 1460, § 1; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4605, enacted by Ga. L. 1979, p. 446, § 2.)

JUDICIAL DECISIONS

Cited in *City of Winder v. Collins*, 259 Ga. 570, 385 S.E.2d 71 (1989).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 369 et seq. 64A C.J.S., Municipal Corporations, § 2234 et seq.

48-8-86. Adoption of resolution imposing tax by governing authorities of county and municipality; time; effective date in general and with respect to services billed monthly; certified copy of resolution to commissioner.

If the imposition of the tax provided in Code Section 48-8-82 is approved in a referendum election as provided by Code Section 48-8-85, the governing authority of the county whose geographical boundary is conterminous with that of the special district and the governing authority of each qualified municipality located wholly or partially within the district shall each adopt a resolution during the first 30 days following the certification of the result of the election imposing the tax authorized by Code Section 48-8-82 on behalf of the county and each qualified municipality located wholly or partially within the special

district. The resolution shall be effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption of the resolution. With respect to services which are regularly billed on a monthly basis, however, the resolution shall become effective with the first regular billing period coinciding with or following the otherwise effective date of the resolution. A certified copy of the resolution shall be forwarded to the commissioner so that it will be received within five days after its adoption. (Ga. L. 1975, p. 984, § 2; Ga. L. 1976, p. 1019, § 1; Code 1933, § 91A-4604, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4606, enacted by Ga. L. 1979, p. 446, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Approval date referred to in Ga. L. 1975, p. 984 is the date the resolution approving the tax is adopted. 1977 Op. Att’y Gen. No. U77-59.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2294 et seq.

48-8-87. Administration and collection of tax by commissioner; applicability of Article 1 of this chapter; first application of moneys to taxpayers’ state tax liabilities; compensation of dealers if payments not delinquent; rate.

The tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district and of each qualified municipality located wholly or partially therein. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter, except that the joint tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer’s liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50. (Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4605, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4607, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 1992, p. 815,

§ 2; Ga. L. 2007, p. 309, § 5/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 20/HB 1221.)

JUDICIAL DECISIONS

County action against companies prohibited. — Provision that taxes are to be exclusively administered and collected by the commissioner precluded an action by a county against companies for damages resulting from the improper remittance of local sales taxes. *Cellular One, Inc. v. Emanuel County*, 227 Ga. App. 197, 489 S.E.2d 50 (1997).

Although cities and counties were authorized under O.C.G.A. § 48-8-87 to impose sales and use taxes, cities and counties had no standing to bring claims against online travel companies for their alleged failure to pay those taxes because the taxes were exclusively administered and collected by the state revenue commissioner. The commissioner was not required to involuntarily join the action un-

der Fed. R. Civ. P. 19(a) because the action was vested solely in the commissioner and the commissioner alleged that any suit was premature in that the Department of Revenue had not determined that a liability existed; further, the cities and counties failed to establish subject matter jurisdiction to support their claim that the commissioner, or the cities and counties in the commissioner's stead, could bring an action for the allegedly unremitted sales and use taxes when the action would deprive the court of diversity jurisdiction. *City of Rome v. Hotels.com, LP*, No. 4:05-CV-249-HLM, 2006 U.S. Dist. LEXIS 56369 (N.D. Ga. May 8, 2006).

Cited in *C.W. Matthews Contracting Co. v. Collins*, 265 Ga. 448, 457 S.E.2d 171 (1995).

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 382 et seq. 64A C.J.S., Municipal Corporations, § 2430 et seq.

ALR. — Validity and construction of

provision exempting from use tax property which is "not readily obtainable" in the state, 88 ALR2d 811.

48-8-88. Required information on sales tax returns; purpose.

Each sales tax return remitting taxes collected under this article shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all taxes imposed by this article are collected and distributed according to situs of sale. (Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4616, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4614, enacted by Ga. L. 1979, p. 446, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 205.

48-8-89. Distribution and use of proceeds; certificate specifying percentage of proceeds for each political subdivision; determination of proceeds for absent municipalities; procedure for filing certificates; effect of failure to file; renegotiation of certificate.

(a) The proceeds of the tax collected by the commissioner in each special district under this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration;

(2) Except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the tax shall be distributed to the governing authority of each qualified municipality within the special district and to the governing authority of the county whose geographical boundary is conterminous with that of the special district for the purpose of assisting such political subdivisions in funding all or any portion of those services which are to be provided by such governing authorities pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

(b) It is the intent of the General Assembly that no agreement as to the distribution of the proceeds of the tax shall enrich any political subdivision beyond a sum which in the absence of the distribution would be raised through other sources of revenue. The distribution shall be in accordance with a certificate which shall be executed in behalf of each respective governing authority, except as otherwise provided in this subsection, and which shall encompass all respective political subdivisions, shall be filed with the commissioner, and shall specify by percentage that portion of the remaining proceeds of the tax available for distribution which each such political subdivision shall receive. On or after July 1, 1995, the distribution of proceeds of the tax as specified in the certificate shall be based upon, but not be limited to, the following criteria:

(1) The service delivery responsibilities of each political subdivision to the population served by the political jurisdiction and served during normal business hours, conventions, trade shows, athletic events and the inherent value to a community of a central business district and the unincorporated areas of the county and the obligation of all residents of the county for the maintenance and prosperity of the central business district and the unincorporated areas of the county;

(2) The service delivery responsibilities of each political subdivision to the resident population of the subdivision;

- (3) The existing service delivery responsibility of each political subdivision;
- (4) The effect of a change in sales tax distribution on the ability of each political subdivision to meet its short-term and long-term debt;
- (5) The point of sale and use which generates the tax to be apportioned;
- (6) The existence of intergovernmental agreements among and between the political subdivisions;
- (7) The use by any political subdivision of property taxes and other revenues from some taxpayers to subsidize the cost of services provided to other taxpayers of the levying subdivision; and
- (8) Any coordinated plan of county and municipal service delivery and financing.

Notwithstanding the fact that a certificate shall not contain an execution in behalf of one or more qualified municipalities within the special district, if the combined total of the populations of all such absent municipalities is less than one-half of the aggregate population of all qualified municipalities located within the special district, the submitting political subdivisions shall, in behalf of the absent municipalities, specify a percentage of that portion of the remaining proceeds which each such municipality shall receive, which percentage shall not be less than that proportion which each absent municipality's population bears to the total population of all qualified municipalities within the special district multiplied by that portion of the remaining proceeds which are received by all qualified municipalities within the special district. For the purpose of determining the population of the absent municipalities, only that portion of the population of each such municipality which is located within the special district shall be computed. No certificate may contain a total of specified percentages in excess of 100 percent. The certificate shall be filed with the commissioner by March 1, 1980, for those special districts in which the tax authorized by this article is being levied on January 1, 1980. For all other special districts in which the tax shall be imposed subsequent to January 1, 1980, the certificate shall be filed with the commissioner within 60 days after the tax is imposed within the district. The commissioner shall continue to distribute the proceeds of the tax as otherwise provided in this Code section until the first day of the next calendar year following the month in which the commissioner receives a certificate as provided in this Code section, which certificate shall provide other percentages upon which the commissioner shall make the distribution to the political subdivisions entitled to the proceeds of the tax. At such time, the commissioner shall thereafter distribute the proceeds of the tax in accordance with the directions of the certificate.

(c) If the certificate provided for in subsection (b) of this Code section is not received by the commissioner by the required date, the authority to impose the tax authorized by Code Section 48-8-82 shall cease on the first day of the second calendar month following the month in which the tax was initially imposed and the tax shall not be levied in the special district after such date unless the reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the tax is so terminated, the commissioner shall retain the proceeds of the tax which were to be distributed to the governing authorities of the county and qualified municipalities within the special district until he receives a certificate in behalf of each such governing authority specifying the percentage of the proceeds which each such governing authority shall receive. If no such certificate is received by the commissioner within 120 days of the date on which the authority to levy the tax was terminated, the proceeds shall escheat to the state and the commissioner shall transfer the proceeds to the state's general fund.

(d)(1) A certificate providing for the distribution of the proceeds of the tax authorized by this article shall expire on December 31 of the second year following the year in which the decennial census is conducted. No later than December 30 of the second year following the year in which the census is conducted, a new distribution certificate meeting the requirements for certificates specified by subsection (b) of this Code section shall be filed with and received by the commissioner. The General Assembly recognizes that the requirement for government services is not always in direct correlation with population. Although a new distribution certificate is required within a time certain of the decennial census, this requirement is not meant to convey an intent by the General Assembly that population as a criterion should be more heavily weighted than other criteria. It is the express intent of the General Assembly in requiring such renegotiation that eligible political subdivisions shall analyze local service delivery responsibilities and the existing allocation of proceeds made available to such governments under the provisions of this article and make rational the allocation of such resources to meet such service delivery responsibilities. Political subdivisions in their renegotiation of such distributions shall at a minimum consider the criteria specified in subsection (b) of this Code section.

(2) The commissioner shall be notified in writing of the commencement of renegotiation proceedings by the county governing authority on behalf of all eligible political subdivisions within the special district. The eligible political subdivisions shall commence renegotiations at the call of the county governing authority before July 1 of the second year following the year in which the census is conducted. If the county governing authority does not issue the call by that date, any eligible municipality may issue the call and so notify the

commissioner and all eligible political subdivisions within the special district.

(3) Following the commencement of such renegotiation, if the parties necessary to an agreement fail to reach an agreement within 60 days, such parties shall submit the dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts in a manner which attempts to reach a resolution of the dispute. Any renegotiation agreement reached pursuant to this paragraph shall be in accordance with the requirements specified in paragraph (1) of this subsection.

(4)(A) If the parties necessary to an agreement fail to reach an agreement within 60 days of submitting the dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts, as required by paragraph (3) of this subsection, any of such parties may file a petition in superior court of the county seeking resolution of the items remaining in dispute. Such petition shall be filed no later than 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of this subsection. Such petition shall be assigned to a judge pursuant to Code Section 15-1-9.1 or 15-6-13 who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit.

(B) Following the filing of the petition as specified under subparagraph (A) of this paragraph, the county and qualified municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district shall separately submit to the judge and the other parties a written best and final offer specifying the distribution of the tax proceeds. There shall be one such offer from the county and one such offer from qualified municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district. The offer from the county may be an offer representing the county and any qualified municipalities that are not represented in the offer from the qualified municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district.

(C) Any qualified municipality or municipalities located wholly or partially within the special district who are not a party to an offer under subparagraph (B) of this paragraph, and who represent at least one-half of the aggregate municipal population of all qualified municipalities who are not a party to an offer under subparagraph (B) of this paragraph, shall be authorized to sepa-

rately submit to the judge and the other parties a written best and final offer specifying the distribution of the tax proceeds. There shall be one such offer from such qualified municipality or municipalities.

(D) Each offer under subparagraphs (B) and (C) of this paragraph shall take into account the allocation required for any absent municipalities in accordance with subsection (b) of this Code section. The judge shall conduct such hearings as the judge deems necessary and shall render a decision based on the requirements and intent of paragraph (1) of this subsection and the criteria in subsection (b) of this Code section. The judge's decision shall adopt the best and final offer of one of the parties submitted under subparagraphs (B) and (C) of this paragraph specifying the allocation of the tax proceeds and shall also include findings of fact. The judge shall enter a final order containing a new distribution certificate and transmit a copy of it to the commissioner.

(E) A final order entered under subparagraph (D) of this paragraph shall be subject to appeal by application upon one or more of the following grounds:

- (i) The judge's disregard of the law;
- (ii) Partiality of the judge; or
- (iii) Corruption, fraud, or misconduct by the judge or a party.

(F) During the process set forth in this paragraph, the commissioner shall continue to distribute the sales tax proceeds according to the percentages specified in the most recently filed distribution certificate or in accordance with subsection (f) of Code Section 48-8-89.1, as applicable, until a new distribution certificate is properly filed.

(5) If a new distribution certificate as provided for in this Code section is not received by the commissioner, the authority to impose the tax authorized by Code Section 48-8-82 shall cease, and the tax shall not be levied in the special district after such date unless the reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the tax is so terminated, the commissioner shall retain the proceeds of the tax which were to be distributed to the governing authorities of the county and qualified municipalities within the special district until the commissioner receives a certificate on behalf of each such governing authority specifying the percentage of the proceeds which each such governing authority shall receive. If no such certificate is received by the commissioner within 120 days of the date on which the authority to levy the tax was terminated, the proceeds shall escheat to the state,

and the commissioner shall transfer the proceeds to the state's general fund.

(6) If the commissioner receives a new distribution certificate by the required date, the commissioner shall distribute the proceeds of the tax in accordance with the directions of the new distribution certificate commencing on January 1 of the year immediately following the year in which such certificate was executed by the parties or the judge or the first day of the second calendar month following the month such certificate was executed by the parties or the judge, whichever is sooner.

(7) Costs of any conflict resolution under paragraph (3) or (4) of this subsection shall be borne proportionately by the affected political subdivisions in accordance with the final percentage distributions of the proceeds of the tax as reflected by the new distribution certificate.

(8) Political subdivisions shall be authorized, at their option, to renegotiate distribution certificates on a more frequent basis than is otherwise required under this subsection.

(9) No provision of this subsection shall apply to any county which is authorized to levy or which levies a local sales tax, local use tax, or local sales and use tax for educational purposes pursuant to a local constitutional amendment or to any county which is authorized to expend all or any portion of the proceeds of any sales tax, use tax, or sales and use tax for educational purposes pursuant to a local constitutional amendment. (Ga. L. 1975, p. 984, § 2; Ga. L. 1976, p. 1019, § 2; Code 1933, § 91A-4606, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4608, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 1983, p. 3, § 64; Ga. L. 1994, p. 1816, §§ 1, 2; Ga. L. 2010, p. 958, § 1/HB 991.)

JUDICIAL DECISIONS

All qualified municipalities share proportionally in sales and use tax proceeds. — General Assembly intended that all qualified municipalities share proportionally in the proceeds of the sales and use tax approved and paid for by the municipalities' citizens. *City of Winder v. Collins*, 259 Ga. 570, 385 S.E.2d 71 (1989).

There is no constitutional requirement that local option sales tax revenues be used for educational purposes. *Salem v. Tattnall County*, 250 Ga. 881, 302 S.E.2d 99 (1983).

Only the portion of a city's population that resides within the special tax district is included when calculating a

municipality's pro rata share of the local option sales tax proceeds in that district. *City of Atlanta v. Collins*, 262 Ga. 261, 417 S.E.2d 141 (1992).

Use of local option sales tax proceeds to reduce county-wide millage rate. — When a county creates a special service tax district which consists of the unincorporated area of the county, and it levies a special service district tax on property located therein, it may use its proceeds from the local option sales tax (O.C.G.A. § 48-8-80 et seq.) to reduce the millage rate of the general maintenance and operation tax which is levied county-wide (i.e., is levied on property

located in municipalities in the county and in the unincorporated area), and not just to reduce the millage rate in the special service tax district. *Nielubowicz v. Chatham County*, 252 Ga. 330, 312 S.E.2d 802 (1984).

Distribution plan could not be imposed. — When one city within a special tax district chose to be treated as an absent municipality, neither the revenue department nor the trial court had authority to impose a distribution plan on the county and cities. *Jackson v. City of College Park*, 230 Ga. App. 487, 496 S.E.2d 777 (1998).

Effective date for a new distribution formula for local option sales tax, when a minority municipality re-

quests treatment as an absent municipality, is January 1 of the next calendar year, whether the county's political subdivisions file a distribution certificate or the commissioner institutes a new distribution formula that includes an absent municipality. *City of Roswell v. City of Atlanta*, 261 Ga. 657, 410 S.E.2d 28 (1991).

Effective date for a replacement certificate shall be January 1 following the month when the governing authorities file a distribution certificate with the commissioner or the commissioner institutes a new distribution formula after notifying the county that a minority municipality elects absent municipality status. *City of Roswell v. City of Atlanta*, 261 Ga. 657, 410 S.E.2d 28 (1991).

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Neither initial nor replacement certificates expire, whether or not the certificates carry expiration dates, assuming, that the tax itself has not been discontinued pursuant to Ga. L. 1979, p. 446, § 2. 1980 Op. Att'y Gen. No. 80-46 (issued prior to the 1994 addition of subsection (d), which provides for expiration of distribution certificates).

Replacement certificates may be filed at any time after the filing of an initial certificate, and replacement certificates always take effect on the January 1 next succeeding the date the replacement certificate is filed. 1980 Op. Att'y Gen. No. 80-46 (issued prior to the 1994 addition of subsection (d), which provides for expiration of distribution certificates).

Percentage of local option sales and use tax to absent municipality. — Absent municipality cannot be forced under O.C.G.A. § 48-8-89 to accept a smaller percentage of the local option sales and use tax proceeds distributed to all qualified municipalities in the county than the percentage the absent municipality's population is of the total population of all such qualified municipalities, regardless of whether that distribution is pursuant to a negotiated certificate or is based instead on an order by a superior court judge when the necessary parties are unable to agree. 2012 Op. Att'y Gen. No. U12-1.

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 382 et seq. 64A C.J.S., Municipal Corporations, § 2495 et seq.

48-8-89.1. Procedure for certifying additional qualified municipalities; issuance of new distribution certificate; cessation of authority to collect tax ceases upon failure to file new certificate.

(a) If there exists within any special district in which the tax authorized by this article is imposed a qualified municipality which was

not a qualified municipality on the date of filing with the commissioner of the most recently filed certificate under Code Section 48-8-89, such qualified municipality may request the commissioner to give notice of the qualified municipality's existence as provided in this subsection. Upon receipt of such a request, the commissioner shall, unless he determines that the requesting entity is not a qualified municipality, within 30 days give written notice of the qualified municipality's existence to the county which is conterminous with the special district in which the qualified municipality is located and to each other qualified municipality within the special district. Such written notice shall include the name of the new qualified municipality, the effective date of the notice, and a statement of the provisions of this Code section.

(b) Within 60 days after the effective date of the notice referred to in subsection (a) of this Code section, a new distribution certificate shall be filed with the commissioner for the special district or, within 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of subsection (d) of Code Section 48-8-89, the county, any qualified municipality located wholly or partially within the special district, or any new qualified municipality as specified under subsection (a) of this Code section located wholly or partially within the special district may file a petition in superior court seeking resolution of the items remaining in dispute pursuant to the procedure set forth in paragraph (4) of subsection (d) of Code Section 48-8-89. In the event such a petition is filed, a new qualified municipality as specified under subsection (a) of this Code section located wholly or partially within the special district shall be subject to the same requirements applicable to qualified municipalities located wholly or partially within the special district under paragraph (4) of subsection (d) of Code Section 48-8-89. The new distribution certificate shall specify by percentage what portion of the proceeds of the tax available for distribution within the special district shall be received by the county in which the special district is located and by each qualified municipality located wholly or partially within the special district, including the new qualified municipality. No distribution certificate shall contain a total of specified percentages in excess of 100 percent.

(c) Except as otherwise provided in this subsection, a distribution certificate required by this Code section must be executed by the governing authorities of the county within which the special district is located and each qualified municipality located wholly or partially within the special district, including the new qualified municipality. Notwithstanding the fact that a certificate shall not contain an execution in behalf of one or more qualified municipalities within the special district, if the combined total of the populations of all such absent municipalities is less than one-half of the aggregate population of all qualified municipalities located within the special district, the submit-

ting political subdivisions shall, in behalf of the absent municipalities, specify a percentage of that portion of the remaining proceeds which each such municipality shall receive, which percentage shall not be less than that proportion which each absent municipality's population bears to the total population of all qualified municipalities within the special district multiplied by that portion of the remaining proceeds which are received by all qualified municipalities within the special district. For the purpose of determining the population of the absent municipalities, only that portion of the population of each such municipality which is located within the special district shall be computed.

(d) If a new certificate is not filed for any special district as required by this Code section, the authority to impose the tax authorized by Code Section 48-8-82 within that special district shall cease on the first day of January of the year following the year in which the required distribution certificate could last have been timely filed. In any special district in which the authority to impose the tax is terminated pursuant to this subsection, the tax may thereafter be reimposed only pursuant to the procedures specified in Code Sections 48-8-84 through 48-8-86.

(e) If a new certificate is filed as required by this Code section, the commissioner shall begin to distribute the proceeds as specified in the new certificate on the first day of January of the first calendar year which begins more than 60 days after the effective date of the notice referred to in subsection (b) of this Code section. The commissioner shall continue to distribute the proceeds of the tax according to the new certificate until a subsequent certificate is filed and becomes effective as provided in Code Section 48-8-89.

(f)(1) As used in this subsection, the term:

(A) "New qualified municipality" means a municipal corporation which has been chartered by local Act since the date of filing with the commissioner of the most recently filed certificate under Code Section 48-8-89 within a county which has a special district for the provision of local government services consisting of the unincorporated area of the county where the population of the unincorporated area of the county, after removal of the population of the new municipality from the unincorporated area, constitutes less than 20 percent of the population of the county according to the most recent decennial census.

(B) "Newly expanded qualified municipality" means a municipal corporation which since the date of filing with the commissioner of the most recently filed certificate under Code Section 48-8-89 has increased its population by more than 15 percent through one or more annexations and is located in the same county as a new qualified municipality.

(2) Notwithstanding any other provision of this Code section, if there exists within any special district in which the tax authorized by this article is imposed a new qualified municipality or a newly expanded qualified municipality or both, such qualified municipality or municipalities may request the commissioner to give notice of the qualified municipality's or municipalities' existence and status as a new qualified municipality or newly expanded qualified municipality as provided in this subsection. Upon receipt of such a request, the commissioner shall, unless he or she determines that the requesting entity is not a new qualified municipality or newly expanded qualified municipality, within 30 days give written notice of the qualified municipality's existence and status to the county which is conterminous with the special district in which the qualified municipality is located and to each other qualified municipality within the special district. Such written notice shall include the name of the new qualified municipality or newly expanded qualified municipality, the effective date of the notice, and a statement of the provisions of this subsection.

(3) Within 60 days after the effective date of the notice referred to in paragraph (2) of this subsection, a new distribution certificate shall be filed with the commissioner for the special district or, within 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of subsection (d) of Code Section 48-8-89, the county, any qualified municipality located wholly or partially within the special district, or any new qualified municipality or newly expanded qualified municipality located wholly or partially within the special district may file a petition in superior court seeking resolution of the items remaining in dispute pursuant to the procedure set forth in paragraph (4) of subsection (d) of Code Section 48-8-89. The new distribution certificate shall address only the proceeds of the tax available for distribution from the percentage allocated to the county in the current distribution certificate and shall specify as a percentage of the total proceeds of the tax what portion of the proceeds shall be received by the county in which the special district is located and by the new qualified municipality and newly expanded qualified municipality located wholly or partially within the special district, if any.

(4) Except as otherwise provided in this paragraph, a distribution certificate required by this subsection must be executed by the governing authorities of the county within which the special district is located, each new qualified municipality located wholly or partially within the special district, and each newly expanded qualified municipality, if any. If a new certificate is not filed within 60 days as required by paragraph (3) of this subsection, the commissioner shall distribute the proceeds of the tax available for distribution from the

percentage allocated to the county in the current distribution certificate such that:

(A) The new qualified municipality receives an allocation equal on a per capita basis to the average per capita allocation to the other qualified municipalities in the county (according to population), to be expended as provided in paragraph (2) of subsection (a) of Code Section 48-8-89; and

(B) Any newly expanded qualified municipality receives a total allocation of tax proceeds (including any amount previously allocated) equal on a per capita basis to the average per capita allocation to the other qualified municipalities in the county (according to population), to be expended as provided in paragraph (2) of subsection (a) of Code Section 48-8-89.

Every other qualified municipality shall continue to receive the share provided by the existing distribution certificate or otherwise provided by law. The county shall receive the remaining proceeds of the tax, to be expended as provided in paragraph (2) of subsection (a) of Code Section 48-8-89. For the purpose of determining the population of qualified municipalities, only that portion of the population of each such municipality which is located within the special district shall be computed. For the purpose of determining population under this Code section, all calculations of population shall be according to the most recent decennial census, including the census data from such census applicable to any annexed territory.

(5) The commissioner shall begin to distribute the proceeds as specified in the newly filed certificate or, if such a certificate is not filed, as specified in paragraph (4) of this subsection on the first day of the first month which begins more than 60 days after the effective date of the notice referred to in paragraph (2) of this subsection. The commissioner shall continue to distribute the proceeds of the tax according to the existing certificate and the certificate applicable to the county and the new qualified municipality or, if such a certificate is not filed, as specified in paragraph (4) of this subsection until a subsequent certificate is filed and becomes effective as provided in Code Section 48-8-89. (Code 1981, § 48-8-89.1, enacted by Ga. L. 1983, p. 1461, § 1; Ga. L. 1985, p. 149, § 48; Ga. L. 2005, p. 185, § 4/HB 36; Ga. L. 2006, p. 901, § 1/HB 1403; Ga. L. 2010, p. 958, §§ 2, 3/HB 991; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (f)(4).

Editor's notes. — Ga. L. 2005, p. 185,

§ 5/HB 36, not codified by the General Assembly, provides for severability.

Ga. L. 2005, p. 185, § 6/HB 36, not codified by the General Assembly, provides that this Act “shall apply with re-

spect to any local Act enacted at the 2005 regular session of the General Assembly or any future session.”

JUDICIAL DECISIONS

All qualified municipalities share proportionally in sales and use tax proceeds. — General Assembly intended that all qualified municipalities share proportionally in the proceeds of the sales and use tax approved and paid for by the municipalities’ citizens. *City of Winder v. Collins*, 259 Ga. 570, 385 S.E.2d 71 (1989).

When qualified municipality elects to be “absent municipality.” — Municipality that becomes qualified after a certificate of distribution has been submitted

to the revenue department is also guaranteed a proportional share of the taxes collected if the municipality elects to be an “absent municipality.” *City of Winder v. Collins*, 259 Ga. 570, 385 S.E.2d 71 (1989).

Only the portion of a city’s population that resides within the special tax district is included when calculating a municipality’s pro rata share of the local option sales tax proceeds in that district. *City of Atlanta v. Collins*, 262 Ga. 261, 417 S.E.2d 141 (1992).

48-8-89.2. Distribution of tax proceeds upon qualified municipality ceasing to be qualified.

If the commissioner determines that a qualified municipality entitled to receive tax proceeds under this article has ceased to be a qualified municipality, he shall thereafter distribute the percentage of the proceeds of the tax to which that qualified municipality was entitled to the county which is conterminous with the special district and to each other qualified municipality within the special district pro rata according to the percentages of the tax to which each other such political subdivision is otherwise entitled; and such distribution formula shall remain in effect until a new certificate is filed and becomes effective as provided in Code Section 48-8-89. (Code 1981, § 48-8-89.2, enacted by Ga. L. 1983, p. 1461, § 1.)

48-8-89.3. Levy of tax in certain special districts; distribution of proceeds to qualified municipality.

(a) Notwithstanding any other provision of this article to the contrary, the tax provided for in Code Section 48-8-82 shall be levied in any special district in which:

(1) Prior to January 1, 1980, a joint county and municipal sales and use tax was levied pursuant to Ga. L. 1975, p. 984, Section 2 (as amended by Ga. L. 1975, Ex. Sess., p. 1729, Section 1; Ga. L. 1976, p. 1019, Sections 1-13; Ga. L. 1977, p. 1008, Section 1; Ga. L. 1978, p. 1429, Sections 1-3; Ga. L. 1978, p. 1460, Sections 1-3; Ga. L. 1978, p. 1678, Section 1; Ga. L. 1978, p. 1695, Section 1; Ga. L. 1979, p. 446, Section 1) or in which a referendum election had authorized the levying of such a tax within the special district;

(2) The tax provided for in Code Section 48-8-82 was actually collected during the period of January 1, 1980, to January 1, 1989; and

(3) There exists a qualified municipality which lies wholly or partially within the special district and which:

(A) Was a qualified municipality at the time of filing of the distribution certificate most recently filed with the commissioner under Code Section 48-8-89; and

(B) Was not assigned any percentage of the net proceeds of the tax under such distribution certificate.

In any special district which meets the criteria specified in this subsection, the tax provided for in Code Section 48-8-82 shall be levied without regard to any past defects in compliance with the procedures specified by this article for the imposition of the tax.

(b) A qualified municipality described in paragraph (3) of subsection (a) of this Code section, for which receipt of a portion of the net tax proceeds was not specified in the certificate most recently filed with the commissioner under Code Section 48-8-89, may request the commissioner to thereafter distribute a portion of the net tax proceeds to the qualified municipality as provided in this Code section. Upon receipt of such a request, the commissioner shall thereafter, unless he determines that the requesting municipality does not meet the criteria specified in this Code section, give written notice of a new distribution formula to the county which is conterminous with the special district, to the requesting qualified municipality, and to each other qualified municipality within the special district. Such new distribution formula shall be determined as follows:

(1) Begin with the percentages specified in the distribution certificate most recently filed with the commissioner;

(2) Assign to the requesting municipality a percentage of the net proceeds which is equal to the total percentage of the net proceeds previously distributed to all other qualified municipalities in the special district multiplied by a fraction, the numerator of which is the population of the requesting municipality and the denominator of which is the population of all qualified municipalities within the special district;

(3) Deduct the percentage of the net proceeds so assigned to the requesting municipality from the percentages previously assigned to all other qualified municipalities within the special district, such deductions to be pro rata on the basis of population; and

(4) Make no change in the percentage of the net proceeds previously distributed to the county which is conterminous with the special district.

(c) This new distribution formula shall be implemented at the earliest date deemed administratively practicable by the commissioner, and the notice specified in subsection (b) of this Code section shall include such date. This new distribution formula shall remain in effect until a subsequent distribution certificate is filed and becomes effective as provided in Code Section 48-8-89.

(d) For the purpose of all population based calculations under this Code section, only that portion of the population of a qualified municipality which is located within the special district shall be computed. (Code 1981, § 48-8-89.3, enacted by Ga. L. 1989, p. 1178, § 1.)

JUDICIAL DECISIONS

Only the portion of a city's population that resides within the special tax district is included when calculating a municipality's pro rata share of the local

option sales tax proceeds in that district. *City of Atlanta v. Collins*, 262 Ga. 261, 417 S.E.2d 141 (1992).

48-8-90. Crediting of tax paid by purchaser in another tax jurisdiction; payment of difference between lesser similar tax payment and tax imposed by article; proof of payment; limitation on credit.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The commissioner may require such proof of payment in another local tax jurisdiction as he deems necessary and proper. No credit shall be granted, however, against the tax imposed under this article for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the special district or in the county which is conterminous with the special district; and taxes so paid in another jurisdiction shall be credited first against the tax levied under this article and then against the tax levied under Article 3 of this chapter, if applicable. (Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4614, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4612, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 1985, p. 232, § 2; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modern-

ize, and correct the Code, revised language in this Code section.

JUDICIAL DECISIONS

Cited in C.W. Matthews Contracting Co. v. Collins, 265 Ga. 448, 457 S.E.2d 171 (1995).

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, §§ 125, 129.

48-8-91. Condition precedent to authority to impose tax following first year of imposition; annual adjustment of millage rate for ad valorem taxation of tangible personal property; formula; information required on tax bills; effect on tax bills when millage rate is zero.

(a) As a condition precedent for authority to levy the tax or to collect any proceeds from the tax authorized by this article for the year following the initial year in which it is levied and for all subsequent years, the county whose geographical boundary is conterminous with that of the special district and each qualified municipality therein receiving any proceeds of the tax shall adjust annually the millage rate for ad valorem taxation of tangible property within such political subdivisions as provided in this subsection. The governing authority of each such political subdivision shall compute the millage rate necessary to produce revenue from taxation of tangible property in its respective political subdivision which, when combined with other revenues reasonably expected to be received by the political subdivision during the year other than revenues derived from the tax imposed pursuant to this article, would provide revenues sufficient to defray the expenses of the political subdivision for the year. The millage rate so ascertained shall then be reduced by a millage rate which, if levied against the tangible property within the political subdivision, would produce an amount equal to the distribution of the proceeds of the tax imposed by this article which were received by the political subdivision during the preceding year. The tax bill of each ad valorem taxpayer in the political subdivision shall show in a prominent manner the millage rate first ascertained as provided in this subsection and shall show such millage rate reduced by the millage rate required to raise an amount of revenue equal to the distribution of the proceeds of the tax imposed by this article during the previous year. The remainder shall be the millage rate upon which each taxpayer's bill shall be based. The tax authority of each such political subdivision shall cause to be shown in a prominent manner on the tax bill of each ad valorem taxpayer the dollar amount of reduction of ad valorem property taxes which the taxpayer has received as a result of the political subdivision's sharing in the

proceeds of the tax authorized to be imposed by this article; provided, however, that the dollar amount of reduction of ad valorem property taxes shall not be calculated or shown on those forms used for the registration and taxation of motor vehicles or trailers.

(b) This Code section shall not be construed to require a county or municipality to prepare and mail ad valorem property tax bills when the ad valorem property tax millage rate in the county or municipality has been reduced to zero as a result of the receipt of proceeds from the tax levied pursuant to this article. (Ga. L. 1975, p. 984, § 2; Ga. L. 1976, p. 1019, §§ 10, 11; Ga. L. 1977, p. 1008, § 1; Code 1933, §§ 91A-4611, 91A-4612, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 1429, §§ 2, 3; Ga. L. 1978, p. 1460, §§ 2, 3; Ga. L. 1978, p. 1695, § 1; Ga. L. 1979, p. 5, §§ 99, 100; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4610, enacted by Ga. L. 1979, p. 446, § 2.)

JUDICIAL DECISIONS

Ad valorem tax reduction created by the local option sales tax is applicable to “tangible property within the political subdivision” (i.e., the county), not just to property within a special service tax district, consisting of the unincorporated area of the county in which a special service district tax is levied on property therein. *Nielubowicz v. Chatham County*, 252 Ga. 330, 312 S.E.2d 802 (1984).

Roll back of millage rate for county

residents unauthorized. — City ordinance violated the Joint County and Municipal Sales and Use Tax Act, O.C.G.A. § 48-8-66 et seq., by authorizing the city to use the city's pro rata share of revenue generated by another county's local option sales tax (LOST) to roll back the millage rate for county residents. *Wells v. City of Baldwin*, 275 Ga. 228, 565 S.E.2d 439 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Distribution of intangible tax receipts should not account for millage rate adjustments. — Intangible tax receipts should be distributed among the various local taxing jurisdictions and the state in proportion to their tangible property millage rates, without taking into account adjustments made pursuant to Ga. L. 1975, p. 984. 1977 Op. Att'y Gen. No. 77-80.

Legislative intent as to adjustment of millage rates on tangible property. — Requirement that tangible property

millage rates be adjusted makes clear the intent of the General Assembly that imposition of a local sales and use tax result initially in property tax relief, rather than in an automatic expansion of funds for local governmental services. This requirement also makes it clear that the General Assembly intended that a local taxing jurisdiction receive the same total revenue, irrespective of whether or not part of the total is generated by a local sales and use tax. 1977 Op. Att'y Gen. No. 77-80.

RESEARCH REFERENCES

C.J.S. — 64A C.J.S., Municipal Corporations, § 2283 et seq.

48-8-92. Referendum election to decide discontinuing imposition of tax; procedure; resolution; call for election; publication; ballot; result; subsequent elections; declaration and certification of result; expense.

(a) Whenever the governing authority of any county and the governing authorities of at least one-half of qualified municipalities located wholly or partially within a special district in which the tax authorized by this article is being levied wish to submit to the electors of the special district the question of whether the tax authorized by Code Section 48-8-82 shall be discontinued, such governing authorities shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a joint resolution of the governing authorities calling for the referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of discontinuing the levy of the tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of the county. The ballot shall have written or printed thereon the following:

“() YES Shall the 1 percent retail sales and use tax being levied within the special district within _____
() NO County be terminated?”

(b) All persons desiring to vote in favor of discontinuing the tax shall vote "Yes," and all persons opposed to discontinuing the tax shall vote "No." If more than one-half of the votes cast are in favor of discontinuing the tax, then the tax shall cease to be levied on the first day of the second calendar quarter following the month in which the commissioner receives the certification of the result of the election; otherwise, the tax shall continue to be levied, and the question of the discontinuing of the tax shall not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be such superintendent's further duty to canvass the returns, declare and certify the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election. (Ga. L. 1979, p. 446, § 1; Code 1933,

§ 91A-4616, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 2010, p. 958, § 4/HB 991.)

48-8-93. Nonimposition of tax on property ordered by and delivered to purchaser outside special district; conditions of delivery.

No tax provided for in Code Section 48-8-82 shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the joint tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety. (Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4615, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4613, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 2012, p. 580, § 19/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted "Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety" for "Inter-

state Commerce Commission or the Georgia Public Service Commission" at the end of this Code section.

JUDICIAL DECISIONS

Cited in *C.W. Matthews Contracting Co. v. Collins*, 265 Ga. 448, 457 S.E.2d 171 (1995).

48-8-94. Taxability of building and construction materials sold or used under contract entered into prior to approval of tax levy.

(a) As used in this Code section, the term "building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No tax provided for in Code Section 48-8-82 shall be imposed by a county or municipality upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to approval of the levy of the tax by the county or municipality and the contract was entered into as a result of a bid actually submitted in response to the advertisement

prior to approval of the levy of the tax. (Ga. L. 1978, p. 1678, § 1; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4615, enacted by Ga. L. 1979, p. 446, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, §§ 103, 120.

48-8-95. Authorization of commissioner to promulgate rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax authorized to be imposed by this article. (Ga. L. 1975, p. 984, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4611, enacted by Ga. L. 1979, p. 446, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 214.

48-8-96. Taxation of property in consolidated governments; change in tax rates.

(a) With respect to any consolidated government created by the consolidation of a county and one or more municipalities in which consolidated government homestead property (exclusive of improvements) is valued for purposes of local ad valorem taxation according to a base year assessed value which does not change so long as the property is actually occupied by the same owner as a homestead, the provisions of this Code section shall control over any conflicting provisions of Article 1 of this chapter or this article.

(b) If the tax authorized by this article is in effect in the special district containing a consolidated government referred to in subsection (a) of this Code section, then the rate of tax imposed under this article in such special district may be increased from 1 percent to 2 percent if such increase is approved by:

(1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required for the initial 1 percent sales tax pursuant to Code Section 48-8-84; and

(2) A referendum conducted in the same manner as otherwise required for the initial 1 percent sales tax pursuant to Code Section

48-8-85, except that the ballot shall have written or printed thereon the following:

- “() YES Shall the retail sales and use tax levied
within the special district within
() NO _____ County be increased from 1
percent to 2 percent?”

(c) Such increased tax rate shall become effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which such increase was approved by the voters. The proceeds of the increased tax shall be divided in the same proportions as the original tax.

(d) Such increased tax rate may be decreased from 2 percent to 1 percent if such decrease is approved by:

(1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required under Code Section 48-8-92; and

(2) A referendum conducted in the same manner as otherwise required for discontinuation of the tax under Code Section 48-8-92, except that the ballot shall have printed or written thereon the following:

- “() YES Shall the retail sales and use tax levied
within the special district within
() NO _____ County be decreased from 2
percent to 1 percent?”

(e) Such decreased tax rate shall become effective on the first day of the second calendar quarter following the month in which the commissioner receives certification of the result of the election.

(f) If the tax authorized by this article is to be newly imposed in the special district containing a consolidated government referred to in subsection (a) of this Code section, then such tax may be imposed in such special district at the rate of 2 percent if such rate is approved by:

(1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required pursuant to Code Section 48-8-84; and

(2) A referendum conducted in the same manner as otherwise required pursuant to Code Section 48-8-85, except that the ballot shall have written or printed thereon the following:

- “() YES Shall a retail sales and use tax of 2 percent
be levied within the special district
() NO within _____ County?”

(g) Such 2 percent tax may be discontinued if such discontinuation is approved by:

(1) A resolution of the governing authority of the consolidated government in the same manner as otherwise required under Code Section 48-8-92; and

(2) A referendum conducted in the same manner as otherwise required for discontinuation of the tax under Code Section 48-8-92, except that the ballot shall have printed or written thereon the following:

“() YES Shall the retail sales and use tax levied
within the special district within
() NO _____ County be terminated?”

(h)(1) In the case of increase from 1 percent to 2 percent, the amount in excess of the initial 1 percent sales and use tax shall not apply to the sale of motor vehicles.

(2) In the case of a newly imposed 2 percent sales and use tax under this Code section, only the amount in excess of a 1 percent sales and use tax shall not apply to the sale of motor vehicles.

(i) In all respects not otherwise provided for in this Code section, the levy of a tax under this article by a consolidated government referred to in subsection (a) of this Code section shall be in the same manner as the levy of the tax by any other county. (Code 1981, § 48-8-96, enacted by Ga. L. 2004, p. 69, § 6; Ga. L. 2010, p. 662, § 21/HB 1221.)

Editor’s notes. — Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.’”

Law reviews. — For article on 2004 amendment of this Code section, see 21 Ga. St. U.L. Rev. 226 (2004).

ARTICLE 2A

HOMESTEAD OPTION SALES AND USE TAX

JUDICIAL DECISIONS

Intergovernmental agreement was contrary to statute. — Intergovernmental agreement between the county and the cities was contrary to the express language of the Homestead Option Sales and Use Tax statute, O.C.G.A. § 48-8-100 et seq., because the agreement required the

county to give the county’s tax revenue to the cities without any control over what was done with the proceeds once given to the cities. *City of Decatur v. DeKalb County*, 255 Ga. App. 868, 567 S.E.2d 332 (2002).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 20 et seq.

C.J.S. — 84 C.J.S., Taxation, § 291.

48-8-100. Short title.

This article shall be known and may be cited as the “Homestead Option Sales and Use Tax Act.” (Code 1981, § 48-8-100, enacted by Ga. L. 1995, p. 655, § 1.)

Law reviews. — For article, “Local Government Litigation: Some Pivotal Principles,” see 55 Mercer L. Rev. 1 (2003). For survey article on local government

law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003).

JUDICIAL DECISIONS

Arrangement between county and city allowable. — Court of Appeals erred in finding that the Homestead Option Sales Tax Act (HOST), O.C.G.A. § 48-8-100 et seq., did not allow a county to disburse funds to various cities in order to facilitate the capital outlay requirement under O.C.G.A. § 48-8-104(c)(2)(A) as HOST was implemented under the “special district” provision of Ga. Const. 1983, Art. IX, Sec. II, Para. VI, and as it was not a “county tax,” it was subject to such an arrangement; however, the intergovernmental agreement between the county and cities had to be authorized

under Ga. Const. 1983, Art. IX, Sec. III, Para. I in order to be valid. *City of Decatur v. DeKalb County*, 277 Ga. 292, 589 S.E.2d 561 (2003).

HOST implements district tax. — Homestead Option Sales Tax (HOST), O.C.G.A. § 48-8-100 et seq., implements a district tax under the “special district” provision of Ga. Const. 1983, Art. IX, Sec. II, Para. VI; intergovernmental contracts which are authorized under Ga. Const. 1983, Art. IX, Sec. III, Para. I cannot be limited by HOST. *City of Decatur v. DeKalb County*, 277 Ga. 292, 589 S.E.2d 561 (2003).

48-8-101. Definitions.

As used in this article, the term:

(1) “Ad valorem taxes for county purposes” means any and all ad valorem taxes for county maintenance and operation purposes levied by, for, or on behalf of the county, excluding taxes to retire general obligation bonded indebtedness of the county.

(2) “Existing municipality” means a municipality created prior to January 1, 2007, lying wholly within or partially within a county.

(3) “Homestead” means homestead as defined and qualified in Code Section 48-5-40, with the additional qualification that it shall include only the primary residence and not more than five contiguous acres of land immediately surrounding such residence.

(4) “Qualified municipality” means a municipality created on or after January 1, 2007, lying wholly within or partially within a

county. (Code 1981, § 48-8-101, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1997, p. 1, § 1; Ga. L. 2007, p. 598, § 1/HB 264.)

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 18.

48-8-101.1. Equal distribution of homestead option sales and use tax among counties and municipalities.

It is the intent of the General Assembly that the proceeds of the homestead option sales and use tax be distributed equitably to the counties and qualified municipalities such that the residents of a new incorporated municipality will continue to receive a benefit from that tax substantially equal to the benefit they would have received if the area covered by the municipality had not incorporated. The provisions of this article shall be liberally construed to effectuate such intent. (Code 1981, § 48-8-101.1, enacted by Ga. L. 2007, p. 598, § 2/HB 264.)

JUDICIAL DECISIONS

Amendment to Homestead Option Sales and Use Tax not payment of gratuity. — Trial court did not err in holding that Ga. L. 2007, p. 598, § 1 et seq., which amended the Homestead Option Sales and Use Tax (HOST) Act, O.C.G.A. § 48-8-100 et seq., was not the payment of a gratuity in violation of Ga. Const. 1983, Art. III, Sec. VI, Para. VI(a), because the equalization amount received by a city as a qualified municipality within a county special tax district clearly represented the share of homestead option sales and use tax capital outlay pro-

ceeds the legislature determined the city's residents were entitled to receive; therefore, that share was not a gift in violation of Ga. Const. 1983, Art. III, Sec. VI, Para. VI(a); under the Homestead Option Sales and Use Tax Act, O.C.G.A. § 48-8-100 et seq., as amended, the city, just like the county, would act as an agent for the special tax district coterminous with the geographical boundaries of the county in expending HOST revenues for capital outlay projects that benefited the special tax district. *DeKalb County v. Perdue*, 286 Ga. 793, 692 S.E.2d 331 (2010).

48-8-102. Creation of special districts; levying of tax; use of proceeds of tax; restriction on levying taxes.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of one of the 159 special districts.

(b) When the imposition of a local sales and use tax is authorized according to the procedures provided in this article within a special district, the county whose geographical boundary is conterminous with that of the special district shall levy a local sales and use tax at the rate

of 1 percent. Except as to rate, the local sales and use tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the sales and use tax levied pursuant to this article, except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3.

(c)(1) Except as otherwise provided in paragraph (2) of this subsection, the proceeds of the sales and use tax levied and collected under this article shall be used only for the purposes of funding capital outlay projects and of funding services within a special district equal to the revenue lost to the homestead exemption as provided in Code Section 48-8-104 and, in the event excess funds remain following the expenditure for such purposes, such excess funds shall be expended as provided in subparagraph (c)(2)(C) of Code Section 48-8-104.

(2) Prior to January 1 of the year immediately following the first complete calendar year in which the sales and use tax under this article is imposed, such proceeds may be used for funding all or any portion of those services which are to be provided by the governing authority of the county whose geographic boundary is conterminous with that of the special district pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

(d) Such sales and use tax shall only be levied in a special district following the enactment of a local Act which provides for a homestead exemption of an amount to be determined from the amount of sales and use tax collected under this article. Such exemption shall commence with taxable years beginning on or after January 1 of the year immediately following the first complete calendar year in which the sales and use tax under this article is levied. Any such local Act shall incorporate by reference the terms and conditions specified under this article. Any such local Act shall not be subject to the provisions of Code Section 1-3-4.1. Any such homestead exemption under this article shall be in addition to and not in lieu of any other homestead exemption applicable to county taxes for county purposes within the special district. Notwithstanding any provision of such local Act to the contrary, the referendum which shall otherwise be required to be conducted under such local Act shall only be conducted if the resolution required under subsection (a) of Code Section 48-8-103 is adopted prior to the issuance of the call for the referendum under the local Act by the election superintendent. If such ordinance is not adopted by that date, the referendum otherwise required to be conducted under the local Act shall not be conducted.

(e) No sales and use tax shall be levied in a special district under this article in which a tax is levied and collected under Article 2 of this chapter. (Code 1981, § 48-8-102, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1996, p. 1, § 3; Ga. L. 1997, p. 1, § 2; Ga. L. 1997, p. 157, § 1A; Ga. L. 2007, p. 309, § 6/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 22/HB 1221.)

Law reviews. — For survey article on local government law, see 60 Mercer L. Rev. 263 (2008). For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Rev-

enue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U.L. Rev. 217 (2011).

JUDICIAL DECISIONS

Contract between county and cities. — Trial court did not err in granting a county summary judgment in the cities’ action for breach of an intergovernmental agreement (IGA) the parties entered into pursuant to the Homestead Option Sales and Use Tax Act (HOST), O.C.G.A. § 48-8-100 et seq., because the IGA was not a valid intergovernmental contract under the Intergovernmental Contracts Clause of the Georgia Constitution, Ga. Const. 1983, Art. IX, Sec. III, Para. I(a), since the focus and clear purpose of the IGA was to provide a formula for the distribution of the HOST revenues, and the IGA could not be deemed an agreement for the provision of authorized “services”; the IGA was an agreement about

how to divide and distribute HOST revenues between the county and the cities, with the cities agreeing to expend the monies disbursed solely for capital outlay projects to be located within the geographical boundaries of the county and to be owned, operated, or both either by the county, one of more cities or any combination thereof, and the fact that the IGA required the cities to expend the tax proceeds in accordance with the mandates of the Homestead Option Sales and Use Tax Act, O.C.G.A. § 48-8-102, did not transform it into either a contract for services or one for the use of facilities. *City of Decatur v. Dekalb County*, 289 Ga. 612, 713 S.E.2d 846 (2011).

48-8-103. Submission to voters to determine imposition of tax.

(a) Whenever the governing authority of any county whose geographic boundary is conterminous with that of the special district wishes to submit to the electors of the special district the question of whether the sales and use tax authorized by Code Section 48-8-102 shall be imposed, any such governing authority shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for a referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of the imposition of the sales and use tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section

21-2-540. Such election shall only be conducted on the date of and in conjunction with a referendum provided for by local Act on the question of whether to impose a homestead exemption within such county and based on the amount of proceeds from the sales and use tax levied and collected pursuant to this article. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following statement which shall precede the ballot question specified in this subsection and the ballot question specified by the required local Act:

“NOTICE TO ELECTORS: Unless **BOTH** the homestead exemption **AND** the retail homestead option sales and use tax are approved, then neither the exemption nor the sales and use tax shall become effective.”

Such statement shall be followed by the following:

- “() YES Shall a retail homestead option sales and use tax of 1 percent be levied within the special
() NO district within _____ County for the purposes of funding capital outlay projects and of funding services to replace revenue lost to an additional homestead exemption of up to 100 percent of the assessed value of homesteads from county taxes for county purposes?”

Notwithstanding any other provision of law to the contrary, the statement, ballot question, and local Act ballot question referred to in this subsection shall precede any and all other ballot questions calling for the levy or imposition of any other sales and use tax which are to appear on the same ballot.

(b) All persons desiring to vote in favor of levying the sales and use tax shall vote “Yes,” and those persons opposed to levying the tax shall vote “No.” If more than one-half of the votes cast are in favor of levying the tax and approving the local Act providing such homestead exemption, then the tax shall be levied in accordance with this article; otherwise, the sales and use tax may not be levied, and the question of the imposition of the sales and use tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be the superintendent’s further duty to canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the

county whose geographical boundary is conterminous with that of the special district holding the election.

(c) If the imposition of the sales and use tax provided in Code Section 48-8-102 is approved in a referendum election as provided by subsections (a) and (b) of this Code section, the governing authority of the county whose geographical boundary is conterminous with that of the special district shall adopt a resolution during the first 30 days following the certification of the result of the election imposing the sales and use tax authorized by Code Section 48-8-102 on behalf of the county whose geographical boundary is conterminous with that of the special district. The resolution shall be effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption of the resolution. With respect to services which are billed on a regular monthly basis, however, the resolution shall become effective with the first regular billing period coinciding with or following the otherwise effective date of the resolution. A certified copy of the resolution shall be forwarded to the commissioner so that it will be received within five days after its adoption. (Code 1981, § 48-8-103, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1997, p. 1, § 3.)

48-8-104. Exclusive administration of tax by commissioner; identification of location where tax collected; manner of disbursement of proceeds.

(a) The sales and use tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the sales and use tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

(b) Each sales and use tax return remitting sales and use taxes collected under this article shall separately identify the location of each retail establishment at which any of the sales and use taxes remitted were collected and shall specify the amount of sales and the amount of

taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all sales and use taxes imposed by this article are collected and distributed according to situs of sale.

(c) The proceeds of the sales and use tax collected by the commissioner in each special district under this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration;

(2) Except for the percentage provided in paragraph (1) of this subsection and the amount determined under subsections (d) and (e) of this Code section, the remaining proceeds of the sales and use tax shall be distributed to the governing authority of the county whose geographical boundary is conterminous with that of the special district; provided, however, that a county and any qualified municipality shall be authorized by intergovernmental agreement to waive the equalization amount otherwise required under subsections (d) and (e) of this Code section and provide for a different distribution amount. In the event of such waiver, except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the sales and use tax shall be distributed to the governing authority of the county whose geographical boundary is conterminous with that of the special district. As a condition precedent for the authority to levy the sales and use tax or to collect any proceeds from the tax authorized by this article for the year following the first complete calendar year in which it is levied and for all subsequent years except the year following the year in which the sales and use tax is terminated under Code Section 48-8-106, the county whose geographical boundary is conterminous with that of the special district shall, except as otherwise provided in subsection (c) of Code Section 48-8-102, expend such proceeds as follows:

(A) A portion of such proceeds shall be expended for the purpose of funding capital outlay projects as follows:

(i) The governing authority of the county whose geographical boundary is conterminous with that of the special district shall establish the capital factor which shall not exceed .200 and, for a county in which a qualified municipality is located, shall not be less than the level required by subsection (d) of this Code section; therefore, at a minimum, the county shall set the capital factor at a level that yields an amount of capital outlay proceeds that is equal to or greater than the sum of all equalization amounts due qualified municipalities and existing municipalities under subsection (e) of this Code section; and

(ii) Capital outlay projects shall be funded in an amount equal to the product of the capital factor multiplied by the net amount of the sales and use tax proceeds collected under this article during the previous calendar year, and this amount shall be referred to as capital outlay proceeds in subsections (d) and (e) of this Code section;

(B) A portion of such proceeds shall be expended for the purpose of funding services within the special district equal to the revenue lost to the homestead exemption as provided in this Code section as follows:

(i) The homestead factor shall be calculated by multiplying the quantity 1.000 minus the capital factor times an amount equal to the net amount of sales and use tax collected in the special district pursuant to this article for the previous calendar year, and then dividing by the taxes levied for county purposes on only that portion of the county tax digest that represents net assessments on qualified homestead property after all other homestead exemptions have been applied, rounding the result to three decimal places;

(ii) If the homestead factor is less than or equal to 1.000, the amount of homestead exemption created under this article on qualified homestead property shall be equal to the product of the homestead factor multiplied times the net assessment of each qualified homestead remaining after all other homestead exemptions have been applied; and

(iii) If the homestead factor is greater than 1.000, the homestead exemption created by this article on qualified homestead property shall be equal to the net assessment of each homestead remaining after all other homestead exemptions have been applied; and

(C) If any of such proceeds remain following the distribution provided for in subparagraphs (A) and (B) of this paragraph and subsections (d) and (e) of this Code section:

(i) The millage rate levied for county purposes shall be rolled back in an amount equal to such excess divided by the net taxable digest for county purposes after deducting all homestead exemptions including the exemption under this article; and

(ii) In the event the rollback created by division (i) of this subparagraph exceeds the millage rate for county purposes, the governing authority of the county whose boundary is conterminous with the special district shall be authorized to expend the surplus funds for funding all or any portion of those services

which are to be provided by such governing authorities pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

(d)(1) The commissioner shall distribute to the governing authority of each qualified municipality located in the special district a share of the capital outlay proceeds calculated as provided in this subsection and subsection (e) of this Code section which proceeds shall be expended for the purpose of funding capital outlay projects of such municipality.

(2) Both the tax commissioner and the governing authority for the county in which a qualified municipality is located shall cooperate with and assist the commissioner in the calculation of the equalization amounts under subsection (e) of this Code section and shall, on or before July 1 of each year, provide to the commissioner and the governing authority of each qualified municipality written certification of the following:

(A) The capital factor set by the county for the current calendar year; provided, however, that the capital factor may not exceed 0.200;

(B) The total amount, if any, due to be paid to existing municipalities from the capital outlay proceeds as required by any intergovernmental agreement between the county and such municipalities;

(C) The incorporated county millage rate in each qualified municipality;

(D) The net homestead digest for each qualified municipality;

(E) The total homestead digest; and

(F) The unincorporated county millage rate.

If the tax commissioner and the governing authority of the county fail to provide such certification on or before July 1, the commissioner shall not distribute to such county any additional proceeds of the sales and use tax collected after July 1 unless and until such certification is provided.

(3) The commissioner shall then calculate the equalization amount due each qualified municipality based on the certifications provided by the tax commissioner and the governing authority of the county and pay such amount to the governing authority of each qualified municipality in six equal monthly payments as soon as practicable during or after each of the last six months of the current calendar year. In the event an existing municipality that has entered into an intergovernmental agreement with a county at any time before

January 1, 2007, to receive capital outlay proceeds of the homestead option sales and use tax and such intergovernmental agreement has become or does become null and void for any reason, such existing municipality shall be treated under this article the same as if it were a qualified municipality as defined in paragraph (4) of Code Section 48-8-101 and therefore receive payment of equalization amounts under this article as provided for under this article. The commissioner shall distribute to the governing authority of the county each month the net sales and use tax remaining after payment of equalization amounts to the qualified municipalities.

(e)(1) As used in this subsection, the term:

(A) "Equalization amount" means for a qualified municipality the product of the equalization millage times the net homestead digest for that qualified municipality.

(B) "Equalization millage" means for each qualified municipality the product of the homestead factor calculated pursuant to division (c)(2)(B)(i) of this Code section times the difference between the unincorporated county millage rate and the incorporated county millage rate for that qualified municipality.

(C) "Incorporated county millage rate" means the millage rate for all ad valorem taxes for county purposes levied by the county in each of the qualified municipalities in the county.

(D) "Net homestead digest" means for each qualified municipality the total net assessed value of all qualified homestead property located in that portion of the qualified municipality located in the county remaining after all other homestead exemptions are applied.

(E) "Total homestead digest" means the total net assessed value of all qualified homestead property located in the county remaining after all other homestead exemptions are applied.

(F) "Unincorporated county millage rate" means the millage rate for all ad valorem taxes for county purposes levied by the county in the unincorporated areas of the county.

(2) For illustration purposes, a hypothetical example of the calculation of the equalization amount is provided below.

First, calculate the homestead factor in accordance with division (c)(2)(B)(i) of this Code section as follows:

(A) Capital factor certified by county as required by subsection (d) of this Code section	0.150
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(B) Net amount of sales and use tax collected in the special district pursuant to this article for the previous calendar year	\$50 million
(C) Taxes levied for county purposes on only that portion of the county tax digest that represents net assessments on qualified homestead property after all other homestead exemptions have been applied	\$100 million
(D) Calculation of homestead factor using figures above = $[(1-.0150)(\$50 \text{ million}/\$100 \text{ million})]$.425

Next, calculate the equalization amount in accordance with paragraph (1) of this subsection as follows:

(E) Unincorporated county millage rate	15.0 mills
(F) Minus the incorporated county millage rate for qualified municipality "Y"	(10.0 mills)
Difference:	= 5.0 mills
(G) Times homestead factor (calculated above)	x .425
(H) Equals the equalization millage:	= 2.125 mills
(I) Times net homestead digest for qualified municipality "Y"	\$200 million
(J) Equals the equalization amount payable to municipality "Y"	\$425,000.00

(3) In the event the total amount payable in a calendar year to all existing municipalities as certified by the county pursuant to subparagraph (d)(2)(B) of this Code section plus the total equalization amount payable to all qualified municipalities in the special district exceeds the capital outlay proceeds calculated based on a maximum capital factor of 0.200, the commissioner shall pay to the governing authority of each qualified municipality a share of such proceeds calculated as follows:

- (A) Determine the capital outlay proceeds based on a maximum capital factor of 0.200;
- (B) Subtract the amount certified by the county as payable to existing municipalities pursuant to subparagraph (d)(2)(B) of this Code section;

(C) The remaining amount equals the portion of the capital outlay proceeds that may be used by the commissioner to pay equalization amounts to qualified municipalities.

The commissioner shall calculate each qualified municipality's share of such remaining amount by dividing the net homestead digest for each qualified municipality by the total homestead digest for all municipalities.

(4) In the event the incorporated county millage rate for a qualified municipality is greater than the unincorporated county millage rate, no payment shall be due from the governing authority of the qualified municipality to the governing authority of the county.

(5) In the event the amount of capital outlay proceeds exceeds the sum of the equalization amounts due all qualified municipalities plus the total amount certified under subparagraph (d)(2)(B) of this Code section as due all existing municipalities, the commissioner shall distribute to each qualified municipality a portion of such excess equal to the net homestead digest for such municipality divided by the total homestead digest.

(6) If any qualified municipality is located partially in the county then only that portion so located shall be considered in the calculations contained in this subsection. (Code 1981, § 48-8-104, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1997, p. 1, § 4; Ga. L. 2007, p. 309, § 7/HB 219; Ga. L. 2007, p. 598, § 3/HB 264; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 23/HB 1221.)

JUDICIAL DECISIONS

Arrangement between county and city allowable. — Court of Appeals erred in finding that the Homestead Option Sales Tax Act (HOST), O.C.G.A. § 48-8-100 et seq., did not allow a county to disburse funds to various cities in order to facilitate the capital outlay requirement under O.C.G.A. § 48-8-104(c)(2)(A) as HOST was implemented under the “special district” provision of Ga. Const. 1983, Art. IX, Sec. II, Para. VI, and as it was not a “county tax,” it was subject to such an arrangement; however, the inter-governmental agreement between the county and cities had to be authorized under Ga. Const. 1983, Art. IX, Sec. III, Para. I in order to be valid. *City of Decatur v. DeKalb County*, 277 Ga. 292, 589 S.E.2d 561 (2003).

Amendment to Homestead Option Sales and Use Tax not payment of

gratuity. — Trial court did not err in holding that Ga. L. 2007, p. 598, § 1 et seq., which amended the Homestead Option Sales and Use Tax (HOST) Act, O.C.G.A. § 48-8-100 et seq., was not the payment of a gratuity in violation of Ga. Const. 1983, Art. III, Sec. VI, Para. VI(a) because the equalization amount received by a city as a qualified municipality within a county special tax district clearly represented the share of homestead option sales and use tax capital outlay proceeds the legislature determined the city's residents were entitled to receive; therefore, that share was not a gift in violation of Ga. Const. 1983, Art. III, Sec. VI, Para. VI(a); under the Homestead Option Sales and Use Tax Act, O.C.G.A. § 48-8-100 et seq., as amended, the city, just like the county, would act as an agent for the special tax district coterminous with the

geographical boundaries of the county in
expending HOST revenues for capital out-
lay projects that benefited the special tax

district. *DeKalb County v. Perdue*, 286 Ga.
793, 692 S.E.2d 331 (2010).

48-8-105. Credit of tax against similar taxes collected in other jurisdictions on same property.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction outside the state, the sales and use tax may be credited against the sales and use tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The commissioner may require such proof of payment in another local tax jurisdiction as the commissioner deems necessary and proper. No credit shall be granted, however, against the sales and use tax imposed under this article for tax paid in another jurisdiction if the sales and use tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the special district or in the county which is conterminous with the special district; and sales and use taxes so paid in another jurisdiction shall be credited first against the sales and use tax levied under this article and then against the sales and use tax levied under Article 3 of this chapter, if applicable. (Code 1981, § 48-8-105, enacted by Ga. L. 1995, p. 655, § 1.)

48-8-106. Submission to voters of question as to whether to discontinue tax.

(a) Whenever the governing authority of any county whose geographic boundary is conterminous with that of the special district in which the sales and use tax authorized by this article is being levied wishes to submit to the electors of the special district the question of whether the sales and use tax authorized by Code Section 48-8-102 shall be discontinued, the governing authority shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for the referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of discontinuing the levy of the sales and use tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section

21-2-540. Such election shall only be conducted on the date of and in conjunction with a referendum provided for by local Act on the question of whether to repeal the homestead exemption within such county which is funded from the proceeds of the sales and use tax levied and collected pursuant to this article. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following:

- “() YES Shall the 1 percent retail homestead option sales and use tax being levied within the special
- () NO district within _____ County for the purposes of funding capital outlay projects and of funding services to replace revenue lost to an additional homestead exemption of up to 100 percent of the assessed value of homesteads from county taxes for county purposes be terminated?”

(b) All persons desiring to vote in favor of discontinuing the sales and use tax shall vote “Yes,” and those persons opposed to discontinuing the tax shall vote “No.” If more than one-half of the votes cast are in favor of discontinuing the sales and use tax and repealing the local Act providing for such homestead exemption, then the sales and use tax shall cease to be levied on the last day of the taxable year following the taxable year in which the commissioner receives the certification of the result of the election; otherwise, the sales and use tax shall continue to be levied, and the question of the discontinuing of the tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be the superintendent’s further duty to canvass the returns, declare and certify the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election. (Code 1981, § 48-8-106, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1997, p. 1, § 5.)

48-8-107. Property ordered by and delivered to purchaser at point outside geographical area of special district in which tax imposed.

No sales and use tax provided for in Code Section 48-8-102 shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area

of the special district in which the sales and use tax is imposed under this article regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety. (Code 1981, § 48-8-107, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 2012, p. 580, § 20/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted "Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety" for "Inter-

state Commerce Commission or the Georgia Public Service Commission" at the end of this Code section.

48-8-108. Taxation of building and construction materials.

(a) As used in this Code section, the term "building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No sales and use tax provided for in Code Section 48-8-102 shall be imposed in such special district upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to approval of the levy of the sales and use tax by the county whose geographical boundary is conterminous with that of the special district and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the sales and use tax. (Code 1981, § 48-8-108, enacted by Ga. L. 1995, p. 655, § 1.)

48-8-109. Rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the sales and use tax authorized to be imposed by this article. (Code 1981, § 48-8-109, enacted by Ga. L. 1995, p. 655, § 1.)

ARTICLE 3

COUNTY SALES AND USE TAXES

Administrative rules and regulations. — Special county tax, Official Com- pilation of the Rules and Regulations of the State of Georgia, Department of Rev-

enue, Sales and Use Tax Division, Chapter 560-12-6.

PART 1

COUNTY SPECIAL PURPOSE LOCAL OPTION SALES TAX

Law reviews. — For article on 2004 amendment of Code sections in this part, see 21 Ga. St. U.L. Rev. 226 (2004).

48-8-110. Definitions.

As used in this part, the term:

(1) “Capital outlay project” means major, permanent, or long-lived improvements or betterments, such as land and structures, such as would be properly chargeable to a capital asset account and as distinguished from current expenditures and ordinary maintenance expenses. Such term shall include, but not be limited to, roads, streets, bridges, police cars, fire trucks, ambulances, garbage trucks, and other major equipment.

(2) “County-wide project” means a capital outlay project or projects as defined in paragraph (1) of this Code section of the county for the use or benefit of the citizens of the entire county and is further defined as follows:

(A) “Level one county-wide project” means a county-wide project or projects of the county to carry out functions on behalf of the state and is limited to a county courthouse; a county administrative building primarily for county constitutional officers or elected officials; a county or regional jail, correctional institution, or other detention facility; a county health department facility; or any combination of such projects; and

(B) “Level two county-wide project” means a county-wide project or projects of the county or one or more municipalities, other than a level one county-wide project, which project or projects are to be owned or operated or both either by the county, one or more municipalities, or any combination thereof.

(3) “Intergovernmental agreement” means a contract entered into pursuant to Article IX, Section III, Paragraph I of the Constitution between a county and one or more qualified municipalities located within the special district containing a combined total of no less than 50 percent of the aggregate municipal population located within the special district.

(4) “Qualified municipality” means only those incorporated municipalities which provide at least three of the following services, either directly or by contract:

- (A) Law enforcement;
- (B) Fire protection (which may be furnished by a volunteer fire force) and fire safety;
- (C) Road and street construction or maintenance;
- (D) Solid waste management;
- (E) Water supply or distribution or both;
- (F) Waste-water treatment;
- (G) Storm-water collection and disposal;
- (H) Electric or gas utility services;
- (I) Enforcement of building, housing, plumbing, and electrical codes and other similar codes;
- (J) Planning and zoning;
- (K) Recreational facilities; or
- (L) Library. (Code 1981, § 48-8-110, enacted by Ga. L. 2004, p. 69, § 8.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “Article IX” was substituted for “Article XI” in paragraph (3).

Editor’s notes. — Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.’”

Ga. L. 2004, p. 69, § 8, redesignated former Code Section 48-8-110 as present Code Section 48-8-110.1 concerning authorization for special county 1 percent sales and use tax.

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section “shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8 (this Code section), 9, 10, 11, 12, 13, 14, and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004.”

OPINIONS OF THE ATTORNEY GENERAL

Borrowing from tax proceeds. — County may not borrow from Special Purpose Local Option Sales Tax (SPLOST) proceeds to fund expenditures other than

voter-approved capital projects authorized in the SPLOST statutes. 2007 Op. Att’y Gen. No. 2007-5.

48-8-110.1. Authorization for county special purpose local option sales tax; subjects of taxation; applicability to sales of motor fuels and food and beverages.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of the 159 special districts.

(b) When the imposition of a special district sales and use tax is authorized according to the procedures provided in this part within a special district, the governing authority of any county in this state may, subject to the requirement of referendum approval and the other requirements of this part, impose within the special district a special sales and use tax for a limited period of time which tax shall be known as the county special purpose local option sales tax.

(c) Any tax imposed under this part shall be at the rate of 1 percent. Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part, except that a tax imposed under this part shall apply to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages as provided for in Code Section 48-8-3. (Code 1981, § 48-8-110, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1989, p. 62, § 11; Ga. L. 1991, p. 87, § 4; Ga. L. 1996, p. 1, § 4; Code 1981, § 48-8-110.1, as redesignated by Ga. L. 2004, p. 69, § 8; Ga. L. 2007, p. 309, § 8/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 24/HB 1221.)

Editor's notes. — Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section "shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8 (this Code section), 9, 10, 11, 12, 13, 14, and 15 of this Act shall not

apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004."

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

For note on 1991 amendment of O.C.G.A. § 48-8-110, see 8 Ga. St. U.L. Rev. 190 (1992).

JUDICIAL DECISIONS

Subjects of taxation. — Intent of the provision that no item or transaction which is not subject to taxation by the state sales and use tax shall be subject to the tax levied pursuant to the local sales and use tax provisions was to restrict taxation under the local sales and use tax statutes to the same types of items and transactions defined as subject to taxation

by the state sales and use tax law; thus, the fact that no state use tax was due on the taxpayer's construction equipment did not mean that no local use taxes could be imposed. *Collins v. C.W. Matthews Contracting Co.*, 213 Ga. App. 109, 444 S.E.2d 100 (1994).

Cited in *Dickey v. Storey*, 262 Ga. 452, 423 S.E.2d 650 (1992).

OPINIONS OF THE ATTORNEY GENERAL

Proceeds not payable directly to cities. — Special county one percent sales and use tax is a county tax, and the state revenue commissioner is authorized to disburse the proceeds of this tax only to the county so that a portion of this tax cannot be paid directly to a city by the commissioner for the city's use in making capital improvements to the city's water system. 1989 Op. Att'y Gen. U89-15.

Specificity of referendum questions relative to the special county one per-

cent sales and use tax. — Referendum questions relative to the special county one percent sales and use tax provided for under O.C.G.A. § 48-8-110 (now O.C.G.A. § 48-8-110.1) et seq. must only be so specific as to place the electorate on fair notice as to which projects the tax proceeds will be devoted, and when there is municipal participation in such projects, identification of the municipalities and projects involved would be required. 1990 Op. Att'y Gen. No. U90-18.

48-8-111. Procedure for imposition of tax; resolution or ordinance; notice to county election superintendent; election.

(a) Prior to the issuance of the call for the referendum and prior to the vote of a county governing authority within a special district to impose the tax under this part, such governing authority may enter into an intergovernmental agreement with any or all of the qualified municipalities within the special district. Any county that desires to have a tax under this part levied within the special district shall deliver or mail a written notice to the mayor or chief elected official in each qualified municipality located within the special district. Such notice shall contain the date, time, place, and purpose of a meeting at which the governing authorities of the county and of each qualified municipality are to meet to discuss the possible projects for inclusion in the referendum, including municipally owned or operated projects. The notice shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be held at least 30 days prior to the issuance of the call for the referendum. Following such meeting, the governing authority of the county within the special district voting to impose the tax authorized by this part shall notify the county election superintendent by forwarding to the superintendent a copy of the resolution or ordinance of the governing authority calling for the

imposition of the tax. Such ordinance or resolution shall specify eligible expenditures identified by the county and any qualified municipality for use of proceeds distributed pursuant to subsection (b) of Code Section 48-8-115. Such ordinance or resolution shall also specify:

(1) The purpose or purposes for which the proceeds of the tax are to be used and may be expended, which purpose or purposes may consist of capital outlay projects located within or outside, or both within and outside, any incorporated areas in the county in the special district or outside the county, as authorized by subparagraph (B) of this paragraph for regional facilities, and which may include any of the following purposes:

(A) A capital outlay project consisting of road, street, and bridge purposes, which purposes may include sidewalks and bicycle paths;

(B) A capital outlay project or projects in the special district and consisting of a courthouse; administrative buildings; a civic center; a local or regional jail, correctional institution, or other detention facility; a library; a coliseum; local or regional solid waste handling facilities as defined under paragraph (27.1) or (35) of Code Section 12-8-22, as amended, excluding any solid waste thermal treatment technology facility, including, but not limited to, any facility for purposes of incineration or waste to energy direct conversion; local or regional recovered materials processing facilities as defined under paragraph (26) of Code Section 12-8-22, as amended; or any combination of such projects;

(C) A capital outlay project or projects which will be operated by a joint authority or authorities of the county and one or more qualified municipalities within the special district;

(D) A capital outlay project or projects, to be owned or operated or both either by the county, one or more qualified municipalities within the special district, one or more local authorities within the special district, or any combination thereof;

(E) A capital outlay project consisting of a cultural facility, a recreational facility, or a historic facility or a facility for some combination of such purposes;

(F) A water capital outlay project, a sewer capital outlay project, a water and sewer capital outlay project, or a combination of such projects, to be owned or operated or both by a county water and sewer district and one or more qualified municipalities in the county;

(G) The retirement of previously incurred general obligation debt of the county, one or more qualified municipalities within the special district, or any combination thereof;

(H) A capital outlay project or projects within the special district and consisting of public safety facilities, airport facilities, or related capital equipment used in the operation of public safety or airport facilities, or any combination of such purposes;

(I) A capital outlay project or projects within the special district, consisting of capital equipment for use in voting in official elections or referendums;

(J) A capital outlay project or projects within the special district consisting of any transportation facility designed for the transportation of people or goods, including but not limited to railroads, port and harbor facilities, mass transportation facilities, or any combination thereof;

(K) A capital outlay project or projects within the special district and consisting of a hospital or hospital facilities that are owned by a county, a qualified municipality, or a hospital authority within the special district and operated by such county, municipality, or hospital authority or by an organization which is tax exempt under Section 501(c)(3) of the Internal Revenue Code, which operates the hospital through a contract or lease with such county, municipality, or hospital authority; or

(L) Any combination of two or more of the foregoing;

(2) The maximum period of time, to be stated in calendar years or calendar quarters and not to exceed five years, unless the provisions of paragraph (1) of subsection (b) or subparagraph (b)(2)(A) of Code Section 48-8-115 are applicable, in which case the maximum period of time for which the tax may be levied shall not exceed six years;

(3) The estimated cost of the project or projects which will be funded from the proceeds of the tax, which estimated cost shall also be the estimated amount of net proceeds to be raised by the tax, unless the provisions of paragraph (1) of subsection (b) or subparagraph (b)(2)(A) of Code Section 48-8-115 are applicable, in which case the final day of the tax shall be based upon the length of time for which the tax was authorized to be levied by the referendum; and

(4) If general obligation debt is to be issued in conjunction with the imposition of the tax, the principal amount of the debt to be issued, the purpose for which the debt is to be issued, the local government issuing the debt, the interest rate or rates or the maximum interest rate or rates which such debt is to bear, and the amount of principal to be paid in each year during the life of the debt.

(b) Upon receipt of the resolution or ordinance, the election superintendent shall issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters of the county

within the special district. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the official organ of the county. If general obligation debt is to be issued by the county or any qualified municipality within the special district in conjunction with the imposition of the tax, the notice published by the election superintendent shall also include, in such form as may be specified by the county governing authority or the governing authority or authorities of the qualified municipalities imposing the tax within the special district, the principal amount of the debt, the purpose for which the debt is to be issued, the rate or rates of interest or the maximum rate or rates of interest the debt will bear, and the amount of principal to be paid in each year during the life of the debt; and such publication of notice by the election superintendent shall take the place of the notice otherwise required by Code Section 36-80-11 or by subsection (b) of Code Section 36-82-1, which notice shall not be required.

(c)(1) The ballot submitting the question of the imposition of the tax authorized by this part to the voters of the county within the special district shall have written or printed thereon the following:

- “() YES Shall a special 1 percent sales and use tax be imposed in the special district of _____ County for a period of time not
- () NO to exceed _____ and for the raising of an estimated amount of \$_____ for the purpose of _____?”

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

“If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ in the principal amount of \$_____ for the above purpose.”

(d) All persons desiring to vote in favor of imposing the tax shall vote “Yes” and all persons opposed to levying the tax shall vote “No.” If more than one-half of the votes cast are in favor of imposing the tax then the tax shall be imposed as provided in this part; otherwise the tax shall not be imposed and the question of imposing the tax shall not again be submitted to the voters of the county within the special district until after 12 months immediately following the month in which the election was held; provided, however, that if an election date authorized under

Code Section 21-2-540 occurs during the twelfth month immediately following the month in which such election was held, the question of imposing the tax may be submitted to the voters of the county within the special district on such date. The election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds.

(e)(1) If the proposal includes the authority to issue general obligation debt and if more than one-half of the votes cast are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I or Article IX, Section V, Paragraph II of the Constitution is given to the proper officers of the county or qualified municipality within the special district issuing such debt; otherwise such debt shall not be issued. If the authority to issue such debt is so approved by the voters, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing authority of the county or qualified municipality within the special district issuing such debt may incur such debt either through the issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as specifically provided otherwise in this part. If such debt is incurred through the execution of a promissory note or notes or other instrument or instruments, no validation proceedings shall be necessary and such debt shall be subject to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise in this part. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the county or qualified municipality within the special district issuing such debt from the tax authorized by this part. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the county or qualified municipality within the special district issuing such debt; and any liability on such debt which is not satisfied from the proceeds of the tax authorized by this part shall be satisfied from the general funds of the county or qualified municipality within the special district issuing such debt. (Code 1981, § 48-8-111, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1985, p. 868, § 1; Ga. L. 1986, p. 10, § 48; Ga. L. 1987, p. 1322, § 1; Ga. L. 1992, p. 6, § 48; Ga. L. 1992, p. 2998, § 1; Ga. L. 1994, p. 1668,

§§ 1-4; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 172, §§ 1, 2; Ga. L. 1995, p. 288, § 1; Ga. L. 1996, p. 230, § 1; Ga. L. 1996, p. 1643, § 4; Ga. L. 1997, p. 969, § 1; Ga. L. 1997, p. 1412, § 3; Ga. L. 1998, p. 585, § 1; Ga. L. 1999, p. 781, § 1; Ga. L. 2000, p. 1375, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 576, § 2; Ga. L. 2004, p. 69, § 9.)

Editor's notes. — Former subsection (c.1), relating to the validity of an election held pursuant to an ordinance or resolution with respect to taxes imposed or to be imposed under this article, was repealed by its own terms December 31, 1999.

Ga. L. 2002, p. 576, § 3, not codified by the General Assembly, provides in part that the amendments to this Code section “shall apply with respect to taxes imposed or to be imposed under resolutions or ordinances adopted on or after July 1, 2002.”

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Taxation, Finance,

ing, and Service Delivery Revision Act of 2004.”

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section “shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8, 9 (the amendment to this Code section), 10, 11, 12, 13, 14, and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004.”

JUDICIAL DECISIONS

Termination of tax. — Unmistakable and unambiguous meaning of the provisions of O.C.G.A. § 48-8-112 as it existed in 1987 was that a special purpose local option sales tax that was not limited to purposes other than road, street, and bridge purposes, and that did not provide in its resolution for general obligation

debt, was to be measured by the period of time specified in the resolution. *Jackson v. Shadix*, 272 Ga. 631, 533 S.E.2d 706 (2000), reversing *Shadix v. Carroll County*, 239 Ga. App. 191, 521 S.E.2d 99 (1999).

Cited in *Gwinnett County v. Bolin*, 262 Ga. 67, 414 S.E.2d 225 (1992).

OPINIONS OF THE ATTORNEY GENERAL

Retiring earlier incurred indebtedness. — Tax under O.C.G.A. Art. 3, Ch. 8, T. 48 may not be imposed to retire bonded indebtedness incurred in conjunction with capital outlay projects which were not planned contemporaneously with the imposition of the tax. 1986 Op. Att’y. Gen. No. U86-6.

Special county one percent sales and use tax may be levied for the purpose of retiring county general obligation debt which was incurred prior to the imposition of the tax in order to purchase a hospital used by or benefiting the citizens of the entire county. 1991 Op. Att’y Gen. No. U91-1.

Annual payments to hospital au-

thority. — Jefferson County may not levy a special county one percent sales and use tax under O.C.G.A. § 48-8-111 for the purpose of obtaining funds to make certain annual payments to the Hospital Authority of Jefferson County and the City of Louisville. 1986 Op. Att’y. Gen. No. U86-6.

Water and sewer project operated by county board of utilities commissioners. — Water or sewer project operated in whole or in part by the Board of Utilities Commissioners of Catoosa County would not fall within O.C.G.A. § 48-8-111(a)(1)(C), and the local government attorneys would have to review the particular contract and project to determine whether or not the ownership and

operation requirement and the power to contract prerequisite of O.C.G.A. § 48-8-111(a)(1)(D) can be met in this instance. 1985 Op. Att’y Gen. No. U85-24.

Purpose in O.C.G.A. § 48-8-111(a)(1)(F) as added by the 1987 amendment to the special county one percent sales and use tax law does not replace the purposes in O.C.G.A. § 48-8-111(a)(1)(C) and (a)(1)(D) but is in addition thereto. 1989 Op. Att’y Gen. U89-15.

Payments to city for project not identified in tax resolution not authorized. — To the extent the question of whether a city can use a portion of “the money” for the construction of a civic center which can be used by both the residents of the city and all the county residents relates to a flow-through of tax proceeds under the Act directly to cities for usage on another project independent of the purpose identified in the resolution of the county calling for imposition of the tax, such payments or usage of the taxes, apart from payments under appropriate contracts, would not be authorized. 1985 Op. Att’y Gen. No. U85-24.

Use of proceeds to repay loan from state revolving fund. — Local government may improve the local sewer and water systems by means of a loan from a state revolving fund and repay with funds derived from a special, county one percent sales tax, when voters have approved the tax and the capital project, but the referendum ballot did not state that the debt would be used to finance the work. 1990 Op. Att’y Gen. No. U90-7.

It is an expenditure for an authorized capital outlay project although proceeds (proceeds paid to a city) are spent in repaying loans rather than in paying project costs directly. 1990 Op. Att’y Gen. No. U90-7.

Loans by the Department of Natural Resources pursuant to O.C.G.A. § 12-5-38.1

and loans by the Georgia Environmental Facilities Authority pursuant to O.C.G.A. § 50-23-1 et seq. do not cause a city or county to incur debt in accordance with Ga. Const. 1983, Art. IX, Sec. V, Para. I. The constitutional underpinning of these programs is in the intergovernmental contract clause, Ga. Const. 1983, Art. IX, Sec. III, Para. I(a). Thus, the procedural requirements in O.C.G.A. § 48-8-111 for submitting a debt question are not triggered when proceeds derived from the sales tax are to be applied to repayment of the loans by the Department of Natural Resources or the Georgia Environmental Facilities Authority. 1990 Op. Att’y Gen. No. U90-7.

Specificity of referendum questions relative to the special county one percent sales and use tax. — Referendum questions relative to the special county one percent sales and use tax provided for under O.C.G.A. § 48-8-110 (now O.C.G.A. § 48-8-110.1) et seq. must only be so specific as to place the electorate on fair notice as to which projects the tax proceeds will be devoted, and when there is municipal participation in such projects, identification of the municipalities and projects involved would be required. 1990 Op. Att’y Gen. No. U90-18.

General obligations of municipalities which were incurred under a constitutionally authorized joint contract with the county may not be retired with proceeds from the special county one percent sales and use tax. Excess proceeds from the tax first must be used to reduce other county indebtedness, and then must be paid into the county general fund. 1991 Op. Att’y Gen. No. U91-1.

Borrowing from tax proceeds. — County may not borrow from Special Purpose Local Option Sales Tax (SPLOST) proceeds to fund expenditures other than voter-approved capital projects authorized in the SPLOST statutes. 2007 Op. Att’y Gen. No. 2007-5.

48-8-111.1. Application of part to consolidated government.

(a) With respect to any consolidated government created by the consolidation of a county and one or more municipalities, the provisions of this Code section shall control over any conflicting provisions of this part.

(b) The tax authorized by this part, if imposed by a consolidated government, shall not be subject to any maximum period of time for which the tax may be levied if general obligation debt is to be issued in conjunction with the imposition of the tax. In such case the resolution or ordinance calling for the imposition of the tax shall not be required to state a maximum period of time for which the tax is to be levied; and the language relating to the maximum period of time for which the tax is to be levied shall be omitted from the ballot. The resolution or ordinance calling for the imposition of the tax shall state the maximum amount of revenue to be raised by the tax, and the tax shall terminate as provided in paragraph (1) or (3) of subsection (b) of Code Section 48-8-112.

(c) A consolidated government shall be authorized to levy a tax for any capital outlay project provided for in subparagraphs (a)(1)(C), (a)(1)(D), and (a)(1)(F) of Code Section 48-8-111, or any combination thereof, without the necessity of operating such project jointly with a qualified municipal governing authority, owning or operating such projects with one or more qualified municipalities, or entering into a contract with one or more qualified municipalities with respect to such project.

(d) In all respects not otherwise provided for in this Code section, the levy of a tax under this part by a consolidated government shall be in the same manner as the levy of the tax by any other county. (Code 1981, § 48-8-111.1, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1995, p. 172, § 3; Ga. L. 2004, p. 69, § 10; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “this part” for “this article” in subsections (a), (b), and (d).

Editor’s notes. — Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.’”

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that

this Code section “shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8, 9, 10 (the amendment to this Code section), 11, 12, 13, 14, and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004.”

48-8-112. Effective date of tax; termination of tax; limitation on taxation; continuation of tax.

(a) If the imposition of the tax is approved at the special election, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which the tax was approved by the voters. With respect to services which are regularly billed on a monthly basis, however, the resolution

shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in the previous sentence.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) If the resolution or ordinance calling for the imposition of the tax provided for the issuance of general obligation debt and such debt is the subject of validation proceedings, as of the end of the first calendar quarter ending more than 80 days after the date on which a court of competent jurisdiction enters a final order denying validation of such debt;

(2) On the final day of the maximum period of time specified for the imposition of the tax; or

(3) As of the end of the calendar quarter during which the commissioner determines that the tax will have raised revenues sufficient to provide to the county and qualified municipalities within the special district net proceeds equal to or greater than the amount specified as the estimated amount of net proceeds to be raised by the tax, unless the provisions in paragraph (1) of subsection (b) or subparagraph (b)(2)(A) of Code Section 48-8-115 are applicable, in which case the final day of the tax shall be based upon the length of time for which the tax was authorized to be levied by the referendum.

(c)(1) At any time no more than a single 1 percent tax under this part may be imposed within a special district.

(2) The governing authority of a county in a special district in which a tax authorized by this part is in effect may, while the tax is in effect, adopt a resolution or ordinance calling for the reimposition of a tax as authorized by this part upon the termination of the tax then in effect; and a special election may be held for this purpose while the tax is in effect. Proceedings for the reimposition of a tax shall be in the same manner as proceedings for the initial imposition of the tax, but the newly authorized tax shall not be imposed until the expiration of the tax then in effect; provided, however, that in the event of emergency conditions under which a county is unable to conduct a referendum so as to continue the tax then in effect without interruption, the commissioner may, if feasible administratively, waive the limitations of subsection (a) of this Code section to the minimum extent necessary so as to permit the reimposition of a tax, if otherwise approved as required under this Code section, without interruption, upon the expiration of the tax then in effect.

(3) Following the expiration of a tax under this part, the governing authority of a county within a special district may initiate proceedings for the reimposition of a tax under this part in the same manner

as provided in this part for initial imposition of such tax. (Code 1981, § 48-8-112, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1987, p. 1322, § 2; Ga. L. 1995, p. 172, § 4; Ga. L. 1997, p. 519, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2004, p. 69, § 11.)

Editor's notes. — Ga. L. 1997, p. 519, § 2, not codified by the General Assembly, provides that this Act shall apply with respect to taxes imposed or to be imposed under resolutions or ordinances adopted on or after April 14, 1997.

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section "shall apply with respect to taxes imposed or to be imposed under

any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8, 9, 10, 11 (the amendment to this Code section), 12, 13, 14, and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004."

Former subsection (d) was repealed on its own terms effective December 31, 2008.

Law reviews. — For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

JUDICIAL DECISIONS

Termination of tax. — Unmistakable and unambiguous meaning of the provisions of O.C.G.A. § 48-8-112 as it existed in 1987 was that a special purpose local option sales tax that was not limited to purposes other than road, street, and bridge purposes, and that did not provide

in its resolution for general obligation debt was to be measured by the period of time specified in the resolution. *Jackson v. Shadix*, 272 Ga. 631, 533 S.E.2d 706 (2000), reversing *Shadix v. Carroll County*, 239 Ga. App. 191, 521 S.E.2d 99 (1999).

48-8-113. Administration and collection by commissioner; application; deduction to dealers.

A tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of the county and qualified municipalities within such special district imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this part shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or in behalf of the county and qualified municipalities within the special district or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a

percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50. (Code 1981, § 48-8-113, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1992, p. 815, § 3; Ga. L. 1992, p. 2998, § 2; Ga. L. 2004, p. 69, § 12; Ga. L. 2007, p. 309, § 9/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 25/HB 1221; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “this part” for “this article” in the second sentence of this Code section.

Editor’s notes. — Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.’”

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that

this Code section “shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8, 9, 10, 11, 12 (the amendment to this Code section), 13, 14, and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004.”

JUDICIAL DECISIONS

County action against companies prohibited. — Provision that taxes are to be exclusively administered and collected by the commissioner precluded an action by a county against companies for dam-

ages resulting from the improper remittance of local sales taxes. *Cellular One, Inc. v. Emanuel County*, 227 Ga. App. 197, 489 S.E.2d 50 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Proceeds not payable directly to cities. — Special county one percent sales and use tax is a county tax, and the State Revenue Commissioner is authorized to disburse the proceeds of this tax only to the county so that a portion of this tax

cannot be paid directly to a city by the State Revenue Commissioner for the city’s use in making capital improvements to its water system. 1989 Op. Att’y Gen. U89-15.

48-8-114. Sales tax return requirements.

Each sales tax return remitting taxes collected under this part shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all taxes imposed by this part are collected and distributed according to situs of sale. (Code 1981, § 48-8-114, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “this part” for “this article” twice in this Code section.

48-8-115. Disbursement of tax proceeds.

(a) The proceeds of the tax collected by the commissioner in each county within a special district under this part shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) Except for the percentage provided in paragraph (1) of this Code section, the remaining proceeds of the tax shall be distributed to the governing authority of the county within the special district imposing the tax as specified in subsection (b) of this Code section.

(b) The county within the special district shall distribute any such proceeds as follows:

(1) To the county governing authority and any qualified municipalities as specified in an intergovernmental agreement. Where an intergovernmental agreement has been entered into, the agreement shall, at a minimum, include the following:

(A) The specific capital outlay project or projects to be funded pursuant to the agreement;

(B) The estimated or projected dollar amounts allocated for each project from tax proceeds from the tax authorized by this part;

(C) The procedures for distributing proceeds from the tax authorized by this part to qualified municipalities;

(D) A schedule for distributing proceeds from the tax authorized by this part to qualified municipalities which schedule shall include the priority or order in which projects will be fully or partially funded;

(E) A provision that all capital outlay projects included in the agreement shall be funded from proceeds from the tax authorized by this part except as otherwise agreed;

(F) A provision that proceeds from the tax authorized by this part shall be maintained in separate accounts and utilized exclusively for the specified purposes;

(G) Record-keeping and audit procedures necessary to carry out the purposes of this part; and

(H) Such other provisions as the county and participating municipalities choose to address; or

(2) Where an intergovernmental agreement has not been entered into pursuant to paragraph (1) of this subsection, the county within the special district shall distribute the proceeds of the tax authorized by this part as follows:

(A)(i) To the governing authority of the county for one or more level one county-wide projects specified by the governing authority of the county in the ordinance or resolution required by subsection (a) of Code Section 48-8-111; provided, however, that any tax levied under this part that funds level one county-wide projects where an intergovernmental agreement has not been entered into pursuant to paragraph (1) of this subsection shall be levied for a five-year period. In the event that any or all level one county-wide projects are estimated to cost an amount which exceeds the proceeds projected to be collected during a 24 month period of the levy of the tax, the tax shall be levied for a six-year period.

(ii) In the event that no level one county-wide project is included in the ordinance or resolution required by subsection (a) of Code Section 48-8-111, to the governing authority of the county for one or more level two county-wide projects specified by the governing authority of the county in the ordinance or resolution required by subsection (a) of Code Section 48-8-111. In the event no level one county-wide project is included in the ordinance or resolution required by subsection (a) of Code Section 48-8-111 and the governing authority of the county has specified one or more municipal projects as level two county-wide projects in the ordinance or resolution required by subsection (a) of Code Section 48-8-111, to the governing authority of the appropriate municipality or municipalities for such level two county-wide projects specified in the ordinance or resolution required by subsection (a) of Code Section 48-8-111. The total estimated cost of all level two county-wide projects specified under this division shall not exceed 20 percent of the proceeds projected to be collected during the period specified in the ordinance or resolution required by subsection (a) of Code Section 48-8-111; or

(B) In the event that no county-wide project is included in the resolution or ordinance calling for the imposition of the tax or in the event that tax proceeds exceed that amount required to fund the county-wide project or projects, the remaining proceeds shall be distributed in the following manner:

(i) As specified in an intergovernmental agreement other than the agreement specified in paragraph (1) of this subsection. The

intergovernmental agreement shall include, at a minimum, the information required in paragraph (1) of this subsection; or

(ii) To the qualified municipalities within the special district based upon the ratio that the population of each qualified municipality bears to the total population of the county within the special district. If any qualified municipality is located in more than one county, only that portion of its population that is within the special district shall be counted. The remainder of such proceeds shall be distributed to the governing authority of the county within the special district. Capital outlay projects included in the referendum ballot by the county or any qualified municipalities within the special district shall be based upon the anticipated proceeds and distribution of the tax. The governing authority of the county within the special district shall distribute all proceeds received by the county for the tax levied pursuant to this part to the qualified municipalities within the special district on a monthly basis where proceeds are distributed in accordance with this division. (Code 1981, § 48-8-115, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 2004, p. 69, § 13; Ga. L. 2005, p. 60, § 48/HB 95.)

Editor's notes. — Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section "shall apply with respect to taxes imposed or to be imposed under

any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8, 9, 10, 11, 12, 13 (the amendment to this Code section), 14, and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004."

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Proceeds not payable directly to cities. — Special county one percent sales and use tax is a county tax, and the State Revenue Commissioner is authorized to disburse the proceeds of this tax only to the county so that a portion of this tax

cannot be paid directly to a city by the State Revenue Commissioner for the city's use in making capital improvements to the city's water system. 1989 Op. Att'y Gen. U89-15.

48-8-116. Tax credits.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this part upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this part, the purchaser shall

pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this part. The commissioner may require such proof of payment in another local tax jurisdiction as he deems necessary and proper. No credit shall be granted, however, against the tax imposed under this part for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the county or in a special district which includes the county; and taxes so paid in another jurisdiction shall be credited first against the tax levied under Article 2 of this chapter, if applicable, and then against the tax levied under this part. (Code 1981, § 48-8-116, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 2013, p. 141 § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “this

part” for “this article” throughout this Code section.

48-8-117. Inapplicability of tax to certain sales of tangible personal property outside taxing county.

No tax provided for in this part shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the county in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller’s vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety. (Code 1981, § 48-8-117, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1992, p. 6, § 48; Ga. L. 2012, p. 580, § 21/HB 865; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2012 amendment, effective July 1, 2012, substituted “Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety” for “Interstate Commerce Commission or the Georgia Public Service Commission” at the end of this Code section.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “this part” for “this article” in this Code section.

48-8-118. “Building and construction materials” defined; inapplicability of tax to certain sales or uses of building and construction materials.

(a) As used in this Code section, the term “building and construction materials” means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construc-

tion or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No tax provided for in this part shall be imposed upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to the voters' approval of the levy of the tax and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the tax. (Code 1981, § 48-8-118, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “this part” for “this article” in subsection (b).

48-8-119. Promulgation of rules and regulations by commissioner.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax authorized to be imposed by this part. (Code 1981, § 48-8-119, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted “this part” for “this article” in this Code section.

48-8-120. Effect of other local sales and use taxes on imposition of tax.

Except as provided in Code Section 48-8-6, the tax authorized by this part shall be in addition to any other local sales and use tax. Except as provided in Code Section 48-8-6, the imposition of any other local sales and use tax within a county or qualified municipality within a special district shall not affect the authority of such a county to impose the tax authorized by this part and the imposition of the tax authorized by this part shall not affect the imposition of any otherwise authorized local sales and use tax within the county within the special district. (Code 1981, § 48-8-120, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 2004, p. 69, § 14.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, “this part” was substituted for “part” twice in the last sentence.

Editor’s notes. — Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.’”

Ga. L. 2004, p. 69, § 23(c), not codified by the General Assembly, provides that this Code section “shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority

on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8, 9, 10, 11, 12, 13, 14 (the amendment to this Code section), and 15 of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004.”

48-8-121. Use of proceeds; issuance of general obligation debt.

(a)(1) The proceeds received from the tax authorized by this part shall be used by the county and qualified municipalities within the special district receiving proceeds of the sales and use tax exclusively for the purpose or purposes specified in the resolution or ordinance calling for imposition of the tax. Such proceeds shall be kept in a separate account from other funds of such county and each qualified municipality receiving proceeds of the sales and use tax and shall not in any manner be commingled with other funds of such county and each qualified municipality receiving proceeds of the sales and use tax prior to the expenditure.

(2) The governing authority of the county and the governing authority of each qualified municipality within the special district receiving any proceeds from the tax pursuant to this part shall maintain a record of each and every project for which the proceeds of the tax are used. A schedule shall be included in each annual audit which shows for each such project the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The auditor’s report on the financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(3) In the event that a qualified municipality fails to comply with the requirements of this part, the county within the special district shall not be held liable for such noncompliance.

(b)(1) If the resolution or ordinance calling for the imposition of the tax specified that the proceeds of the tax are to be used in whole or in part for capital outlay projects consisting of road, street, and bridge purposes, then authorized uses of the tax proceeds shall include:

(A) Acquisition of rights of way for roads, streets, bridges, sidewalks, and bicycle paths;

(B) Construction of roads, streets, bridges, sidewalks, and bicycle paths;

(C) Renovation and improvement of roads, streets, bridges, sidewalks, and bicycle paths, including resurfacing;

(D) Relocation of utilities for roads, streets, bridges, sidewalks, and bicycle paths;

(E) Improvement of surface-water drainage from roads, streets, bridges, sidewalks, and bicycle paths; and

(F) Patching, leveling, milling, widening, shoulder preparation, culvert repair, and other repairs necessary for the preservation of roads, streets, bridges, sidewalks, and bicycle paths.

(2) Storm-water capital outlay projects and drainage capital outlay projects may be funded pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111 or in conjunction with road, street, and bridge capital outlay projects.

(c) No general obligation debt shall be issued in conjunction with the imposition of the tax unless the governing authority of the county or qualified municipalities within special district issuing the debt determines that, and if the debt is to be validated it is demonstrated in the validation proceedings that, during each year in which any payment of principal or interest on the debt comes due the county or qualified municipalities within special district issuing such debt will receive from the tax authorized by this part net proceeds sufficient to fully satisfy such liability. General obligation debt issued under this part shall be payable first from the separate account in which are placed the proceeds received by the county or qualified municipalities within the special district issuing such debt from the tax authorized by this part. Such debt, however, shall constitute a pledge of the full faith, credit, and taxing power of the county or qualified municipalities within the special district issuing such debt; and any liability on said debt which is not satisfied from the proceeds of the tax authorized by this part shall be satisfied from the general funds of the county or qualified municipalities within the special district issuing such debt.

(d) The resolution or ordinance calling for imposition of the tax authorized by this part may specify that all of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. If the resolution or ordinance so provides, then such proceeds shall be used solely for such purpose except as provided in subsection (g) of this Code section.

(e) The resolution or ordinance calling for the imposition of the tax authorized by this part may specify that a part of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. If the ordinance or resolution so provides, it shall specifically state the other purposes for which such proceeds will be used; and such other purposes shall be a part of the capital outlay project or projects for which the tax is to be imposed. In such a case no part of the net proceeds from the tax received in any year

shall be used for such other purposes until all debt service requirements of the general obligation debt for that year have first been satisfied from the account in which the proceeds of the tax are placed.

(f) The resolution or ordinance calling for the imposition of the tax may specify that no general obligation debt is to be issued in conjunction with the imposition of the tax. If the ordinance or resolution so provides, it shall specifically state the purpose or purposes for which the proceeds will be used.

(g)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of payment of general obligation debt issued in conjunction with the imposition of the tax, then any net proceeds of the tax in excess of the amount required for final payment of such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

(B) If the county or qualified municipality within the special district receives from the tax net proceeds in excess of the estimated cost of the capital outlay project or projects stated in the resolution or ordinance calling for the imposition of the tax or in excess of the actual cost of such capital outlay project or projects, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

(C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section 48-8-112 by reason of denial of validation of debt, then all net proceeds received by the county or qualified municipality within the special district from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

(2) Unless otherwise provided in this part or in an intergovernmental agreement entered into pursuant to this part, excess proceeds subject to this subsection shall be used solely for the purpose of reducing any indebtedness of the county within the special district other than indebtedness incurred pursuant to this part. If there is no such other indebtedness or, if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds shall next be paid into the general fund of the county within the special district, it being the intent that any funds so paid into the general fund of the county be used for the purpose of reducing ad valorem taxes. (Code 1981, § 48-8-121, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1987, p. 1322, § 3; Ga. L. 1990, p. 382, § 1; Ga. L. 1992, p. 2998, § 3; Ga. L. 1994, p. 97, § 48; Ga. L. 1994, p. 1668, §§ 5-7; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 172, § 5; Ga. L. 1996, p. 1643, § 4A; Ga. L. 1997, p. 541, § 1; Ga. L. 1998, p. 579, § 1; Ga. L. 2004, p. 69, § 15.)

Editor's notes. — Ga. L. 1994, p. 1668, provided that §§ 6 and 7 of that Act are § 8, not codified by the General Assembly, applicable with respect to taxes imposed

prior to April 19, 1994, as well as with respect to taxes imposed on or after that date.

Ga. L. 1994, p. 1668, § 7, which added subsection (h), relating to the development of a sanitary landfill, also provided for the repeal of that subsection, effective July 1, 1999.

Ga. L. 1997, p. 541, § 2, not codified by the General Assembly, provides that that Act shall apply with respect to taxes imposed prior to April 14, 1997.

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Ga. L. 2004, p. 69, § 23(c), not codified

by the General Assembly, provides that this Code section "shall apply with respect to taxes imposed or to be imposed under any resolution or ordinance adopted by a county or municipal governing authority on or after July 1, 2004; and, except as otherwise specifically provided in this Act, Sections 8, 9, 10, 11, 12, 13, 14, and 15 (the amendment to this Code section) of this Act shall not apply with respect to taxes imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2004."

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007). For annual survey of law on real property, see 62 Mercer L. Rev. 283 (2010).

JUDICIAL DECISIONS

Termination of tax. — Unmistakable and unambiguous meaning of the provisions of O.C.G.A. § 48-8-112 as it existed in 1987 was that a special purpose local option sales tax that was not limited to purposes other than road, street, and bridge purposes, and that did not provide in its resolution for general obligation debt, was to be measured by the period of time specified in the resolution. *Jackson v. Shadix*, 272 Ga. 631, 533 S.E.2d 706 (2000), reversing *Shadix v. Carroll County*, 239 Ga. App. 191, 521 S.E.2d 99 (1999).

Use of proceeds. — Board of county commissioners was not authorized to use proceeds from SPLOST tax for a purpose entirely different from that contained in the SPLOST budget and account reports; the board was bound by the reports to complete all projects listed therein unless circumstances arose which dictated that projects which initially seemed feasible were no longer so and in this regard the governing authority had discretion to make adjustments in the plans for these projects, but could not abandon the projects altogether. *Dickey v. Storey*, 262 Ga. 452, 423 S.E.2d 650 (1992).

Mandamus was not appropriate under O.C.G.A. § 9-6-20 as members of a county board of commissioners did not fail to

perform the board's official duties by entering into a 2006 intergovernmental agreement to have \$12 million raised by a 1999 Special Local Option Sales Tax (SPLOST) referendum used to upgrade and build two local waste water facilities as the SPLOST funds were insufficient to upgrade the county's existing centralized system of waste water treatment; the 2006 intergovernmental agreement utilized the funds for the purposes specified in the 1999 resolution under O.C.G.A. § 48-8-121(a)(1), just by a different means. *Hicks v. Khoury*, 283 Ga. 407, 658 S.E.2d 616 (2008).

Excess proceeds. — Actual cost, rather than estimated cost, established the maximum amount of Special Purpose Local Option Sales Tax (SPLOST) revenue that could have been expended, and when actual cost exceeded estimated cost, actual cost was the determinative standard; when the actual cost of the projects exceeded the maximum cost of the projects stated in the SPLOST resolution, no "excess" proceeds existed so long as the project remained incomplete. *Haugen v. Henry County*, 277 Ga. 743, 594 S.E.2d 324, cert. denied, 543 U.S. 816, 125 S. Ct. 63, 160 L. Ed. 2d 22 (2004).

Cited in *Anti-Landfill Corp. v. North Am. Metal Co., LLC*, 299 Ga. App. 509, 683 S.E.2d 88 (2009).

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Interest earned on education taxes and in special county taxes becomes part of the tax proceeds in the account fund, which fund is required to be used exclusively for the purpose(s) specified in the resolution or ordinance calling for the imposition of the tax. 2001 Op. Att’y Gen. No. 2001-3.

Borrowing from tax proceeds. — County may not borrow from Special Purpose Local Option Sales Tax (SPLOST) proceeds to fund expenditures other than voter-approved capital projects authorized in the SPLOST statutes. 2007 Op. Att’y Gen. No. 2007-5.

48-8-122. Record of projects on which tax proceeds are used; annual reporting and newspaper publication of report.

The governing authority of the county and the governing authority of each municipality receiving any proceeds from the tax under this part or under Article 4 of this chapter shall maintain a record of each and every project for which the proceeds of the tax are used. Not later than December 31 of each year, the governing authority of each local government receiving any proceeds from the tax under this part shall publish annually, in a newspaper of general circulation in the boundaries of such local government and in a prominent location on the local government website, if such local government maintains a website, a simple, nontechnical report which shows for each project or purpose in the resolution or ordinance calling for imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, amounts expended in the current year, any excess proceeds which have not been expended for a project or purpose, estimated completion date, and the actual completion cost of a project completed during the current year. In the case of road, street, and bridge purposes, such information shall be in the form of a consolidated schedule of the total original estimated cost, the total current estimated cost if it is not the original estimated cost, and the total amounts expended in prior years and the current year for all such projects and not a separate enumeration of such information with respect to each such individual road, street, or bridge project. The report shall also include a statement of what corrective action the local government intends to implement with respect to each project which is underfunded or behind schedule. (Code 1981, § 48-8-123, enacted by Ga. L. 2004, p. 69, § 21; Ga. L. 2012, p. 954, § 2/SB 332.)

The 2012 amendment, effective July 1, 2012, in the second sentence, inserted “and in a prominent location on the local government website, if such local government maintains a website”, deleted “and” following “prior years,” and added “, any excess proceeds which have not been ex-

pended for a project or purpose, estimated completion date, and the actual completion cost of a project completed during the current year”; and deleted “and a statement of any surplus funds which have not been expended for a project or purpose” from the end of the last sentence.

Editor's notes. — Former Code Section 48-8-122, concerning repeal of this article upon an increase of current state sales and use tax rate, was based on Ga. L. 1987, p. 1322, § 4, and Ga. L. 1988, p. 543, § 2, and was repealed by Ga. L. 1989, p. 62, § 12, effective April 1, 1989.

Ga. L. 2004, p. 69, § 1, not codified by

the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Law reviews. — For article on 2004 amendment of this Code section, see 21 Ga. St. U.L. Rev. 226 (2004).

48-8-123. Modification of projects approved by referendum which have become infeasible in connection with county special purpose local option sales and use tax.

(a) For purposes of this Code section, the term "infeasible" means that the project has, in the judgment of the governing authority as expressed in the resolution or ordinance required by subsection (b) of this Code section, become impracticable, unserviceable, unrealistic, or otherwise not in the best interests of the citizens of the special district or the municipality.

(b)(1) Notwithstanding any other provision of this part to the contrary, if the tax authorized by this part has been imposed within a special district for a purpose or purposes authorized by subsection (a) of Code Section 48-8-111 and one or more projects authorized therein become or are determined to be infeasible, then the provisions of this Code section shall apply. However, this Code section shall not apply until and unless the governing authority or governing authorities specified under paragraph (2) of this subsection adopt a resolution or ordinance determining that such project or projects for which the levy has been approved have become infeasible in accordance with paragraph (2) of this subsection.

(2)(A) If a project that has become infeasible is a project for which the county is responsible, an ordinance or resolution of the county shall be required determining that the project has become infeasible.

(B) If a project that has become infeasible is a municipal project, an ordinance or resolution of the municipality responsible for the project shall be required determining that the project has become infeasible. Upon its approval by the municipality, such ordinance or resolution shall be transmitted to the governing authority of the county. The county governing authority shall rely on the determination by the municipality that the municipal project has become infeasible.

(C) If a project that has become infeasible is a joint project of the county or a county authority and one or more municipalities or a joint project of two or more municipalities, an ordinance or resolu-

tion of all of the jurisdictions involved in the joint project shall be required determining that the project has become infeasible.

(3) If the governing authority desiring to determine that a project is infeasible has incurred or entered into financing for such project, whether through an intergovernmental contract, a multiyear lease or purchase contract under Code Section 36-60-13, or other form of indebtedness, no such ordinance or resolution shall be adopted until the governing authority discharges in full the obligation incurred or provides for the defeasance of such obligation.

(c) Upon the adoption of the resolution or ordinance required by subsection (b) of this Code section, the tax shall continue to be imposed for the same period of time and for the raising of the same amount of revenue as originally authorized. Subject to approval in a referendum required by subsection (d) of this Code section, the county, or any municipality if the infeasible project is a project owned or operated by the municipality, or those entities that are part of a joint project, may expend the previously collected and future proceeds of the tax, or such portion thereof as was intended for the purpose that has been determined to be infeasible if the tax were imposed for more than one purpose, to reduce any general obligation indebtedness of the affected jurisdiction within the special district other than indebtedness incurred pursuant to this part, or by paying such proceeds into the general fund of the county or municipality to be used for the purpose of reducing ad valorem taxes, or both. In the event of a joint project in which there is an intergovernmental agreement apportioning the project, the proceeds shall be divided among the entities to such joint agreement according to such apportionment. In the event of a joint project in which there is no agreement apportioning the project, the proceeds shall be divided equally among the entities to the joint project.

(d)(1) Upon the adoption of the resolution or ordinance required by subsection (b) of this Code section, the governing authority of the county shall notify the county election superintendent by forwarding to the superintendent a copy of a resolution or ordinance calling for the modification of the purpose for which proceeds of the tax authorized by this part may be expended. Such ordinance or resolution shall specify the modified purpose for which the balance of proceeds of the tax are to be used and an estimate of the amount of the proceeds available to be used for the modified purpose.

(2) Upon receipt of the resolution or ordinance required by this subsection, the election superintendent shall issue the call for an election for the purpose of submitting to the voters of the county within the special district the question of modifying the project or projects for which the proceeds of the levy may be expended. The election superintendent shall issue the call and shall conduct the

election, in conjunction with the next election held, to submit to the electors of the special district the imposition of a tax under this part and shall conduct the election in the manner specified in subsection (b) of Code Section 48-8-111.

(3) The ballot submitting a question of the approval of the modified purpose for a levy previously approved by the electors of the county within the special district as authorized by this Code section shall have written or printed thereon the following:

- “() YES Shall the capital outlay project consisting of _____ approved for use of proceeds of the special 1 percent sales and use tax imposed in the special district of _____ County in a referendum on _____ be modified so as to authorize use of such proceeds for the purpose of (reducing debt, reducing ad valorem taxes, or reducing debt and ad valorem taxes) of the (county) (municipality)?”

(4) If there are multiple projects to be submitted to the electors for approval of modified purpose, there shall be one question for all projects of the county or its authorities, one question for all projects of municipalities, and one question for joint projects.

(5) All persons desiring to vote in favor of modifying the project or projects shall vote “Yes,” and all persons opposed to modifying the project or projects shall vote “No.” If more than one-half of the votes cast are in favor of modifying the project or projects, then the proceeds of the tax imposed as provided in this part shall be used for such modified purpose; otherwise, the proceeds of the tax shall not be used for such modified purpose. The election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds.

(e) This Code section shall not apply to a board of education which levies the sales tax for educational purposes pursuant to Part 2 of this article and Article VIII, Section VI, Paragraph IV of the Constitution. (Code 1981, § 48-8-123, enacted by Ga. L. 2011, p. 294, § 1/HB 240.)

Effective date. — This Code section became effective May 11, 2011.

48-8-124. Enforcement.

The superior courts of this state shall have jurisdiction to enforce compliance with the provisions of this part, including the power to grant injunctions or other equitable relief. In addition to any action that may be brought by any person or entity, the Attorney General shall have authority to bring enforcement actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this part. (Code 1981, § 48-8-124, enacted by Ga. L. 2012, p. 954, § 3/SB 332.)

Effective date. — This Code section became effective July 1, 2012.

PART 2**SALES TAX FOR EDUCATIONAL PURPOSES**

Cross references. — Performance audit requirements for projects funded by sales tax for educational purposes, § 20-2-491.

48-8-140. Authority for and legislative intent of article.

This part is enacted pursuant to the authority of Article VIII, Section VI, Paragraph IV of the Constitution of Georgia and it is the intent of the General Assembly in the enactment of this part to further define and implement such provision of the Constitution. (Code 1981, § 48-8-140, enacted by Ga. L. 1996, p. 1643, § 5; Ga. L. 1997, p. 157, §§ 2, 3.)

48-8-141. Manner of imposition of tax; report.

Except as otherwise expressly provided in Article VIII, Section VI, Paragraph IV of the Constitution of Georgia, the sales tax for educational purposes which may be levied by a board of education of a county school district or concurrently by the board of education of a county school district and the board of education of each independent school district located within such county shall be imposed and levied by such board or boards of education and collected by the commissioner on behalf of such board or boards of education in the same manner as provided for under Part 1 of this article and the provisions of Part 1 of this article in particular, but without limitation, the provisions regarding the authority of the commissioner to administer and collect this tax, retain the 1 percent administrative fee, and promulgate rules and regulations governing this tax shall apply equally to such board or boards of education. The report required pursuant to Code Section 48-8-122 shall be applicable; provided, however, that in addition to posting such report in a newspaper of general circulation as required by

such Code section, such report may be posted on the searchable website provided for under Code Section 50-6-32. (Code 1981, § 48-8-141, enacted by Ga. L. 1996, p. 1643, § 5; Ga. L. 1997, p. 157, §§ 2, 3; Ga. L. 2010, p. 906, § 1/HB 1013.)

48-8-142. Issuance of general obligation debt in conjunction with tax; required contents of resolution and ballot.

If general obligation debt is to be issued in conjunction with the imposition of the sales tax for educational purposes authorized by Article VIII, Section VI, Paragraph IV of the Constitution, the resolution or concurrent resolutions imposing such tax shall specify the principal amount of the debt to be issued, the purpose for which the debt is to be issued, the interest rate or rates or the maximum interest rate or rates which such debt is to bear, and the amount of principal to be paid in each year during the life of the debt. If such general obligation debt is to be issued, the ballot shall have written or printed thereon, in addition to the descriptions required by Article VIII, Section VI, Paragraph IV(c) of the Constitution, the following:

“If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ in the principal amount of \$_____ for the above purpose.” (Code 1981, § 48-8-142, enacted by Ga. L. 1996, p. 1643, § 5; Ga. L. 1997, p. 157, §§ 2, 3.)

48-8-143. Distribution of sales tax for educational purposes.

The net proceeds of the sales tax for educational purposes shall be distributed in the manner provided under Article VIII, Section VI, Paragraph IV(g) of the Constitution unless another distribution formula is provided for by the enactment of a local Act. Any such local Act providing for an alternate distribution formula shall not be amended during the time period for which the tax was imposed. (Code 1981, § 48-8-143, enacted by Ga. L. 1998, p. 591, § 1.)

48-8-144. Local charter schools and state chartered special schools as capital outlay project.

(a) As used in this Code section, the term:

(1) “Local charter school” means a local charter school as defined in paragraph (7) of Code Section 20-2-2062.

(2) “State chartered special school” means a state chartered special school as defined in paragraph (16) of Code Section 20-2-2062 and with respect to which the referendum required under Article VIII,

Section V, Paragraph VII of the Constitution has been conducted and approved.

(b) A county or independent board of education shall be authorized to include local charter schools, state chartered special schools, or both as capital outlay projects in projects specified in the ballot language for a proposed tax under Article VIII, Section VI, Paragraph IV of the Constitution and this part. (Code 1981, § 48-8-144, enacted by Ga. L. 2008, p. 167, § 1/HB 1065.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, “of the Constitution” was inserted in paragraph (a)(2).

ARTICLE 3A

UNIFORM SALES AND USE TAX ADMINISTRATION

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, this article, which was enacted as Article 4, containing Code Sections 48-8-160 through 48-8-166, was redesignated as Article 3A, containing Code Sections 48-8-160 through 48-8-166.

Editor’s notes. — Ga. L. 2004, p. 410, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2004.’”

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, § 21 et seq.

48-8-160. Short title.

This article shall be known and may be cited as the “Uniform Sales and Use Tax Administration Act.” (Code 1981, § 48-8-160, enacted by Ga. L. 2004, p. 410, § 8.)

48-8-161. Definitions.

As used in this article, the term:

(1) “Agent” means a person appointed by a seller to represent the seller before the member states.

(2) “Agreement” means the Streamlined Sales and Use Tax Agreement.

(3) “Certified automated system” means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(4) “Certified service provider” means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller’s sales tax functions.

(5) “Model 1 seller” means a seller registered under the agreement that has selected a certified service provider as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

(6) “Model 2 seller” means a seller registered under the agreement that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(7) “Model 3 seller” means a seller registered under the agreement that has sales in at least five member states, has total annual sales revenue of at least \$500 million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

(8) “Model 4 seller” means a seller that is not a Model 1 seller, a Model 2 seller, or a Model 3 seller.

(9) “Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(10) “Sales tax” means the taxes levied under this chapter.

(11) “Seller” means any person making sales, leases, or rentals of personal property or services.

(12) “State” means any state of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(13) “Use tax” means the taxes levied under this chapter. (Code 1981, § 48-8-161, enacted by Ga. L. 2004, p. 410, § 8; Ga. L. 2010, p. 662, § 26/HB 1221; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, in the first sentence of paragraph (7), substituted “a

seller registered” for “seller registered” and substituted “\$500 million” for “five hundred million dollars” and revised punctuation in paragraph (8).

48-8-162. Authorization to enter Streamlined Sales and Use Tax Agreement with other states.

The department is authorized to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize

sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The department is further authorized to take other actions reasonably required to implement the provisions set forth in this article. Other actions authorized by this Code section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement. The department, or its designee, is authorized to represent this state before the other states that are signatories to the agreement. (Code 1981, § 48-8-162, enacted by Ga. L. 2004, p. 410, § 8.)

48-8-163. Effect upon other statutory provisions.

No provision of the agreement authorized by this article in whole or part invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state. (Code 1981, § 48-8-163, enacted by Ga. L. 2004, p. 410, § 8.)

48-8-164. Purpose.

The agreement authorized by this article is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state. (Code 1981, § 48-8-164, enacted by Ga. L. 2004, p. 410, § 8.)

48-8-165. Benefit is to the state; no individual right to challenge or contest application.

(a) The agreement authorized by this article binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(b) Consistent with subsection (a) of this Code section, no person shall have any cause of action or defense under the agreement or by

virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement. (Code 1981, § 48-8-165, enacted by Ga. L. 2004, p. 410, § 8.)

48-8-166. Certified service provider as agent of seller; responsibility for proper functioning of automated systems; failure to meet performance standards by sellers of proprietary systems.

(a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this Code section. A seller that contracts with a certified service provider is not liable to the state for sales or use taxes due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of taxes attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of taxes due on transactions and has signed an agreement establishing a performance standard for that system is liable to the state for the failure of the system to meet the performance standard. (Code 1981, § 48-8-166, enacted by Ga. L. 2004, p. 410, § 8.)

48-8-167. Member of Streamlined Sales Tax Governing Board.

The Georgia members of the Streamlined Sales Tax Governing Board shall be a member of the House of Representatives appointed by the Speaker of the House of Representatives, a member of the Senate appointed by the President Pro Tempore of the Senate, and a designee of the commissioner. (Code 1981, § 48-8-167, enacted by Ga. L. 2010, p. 662, § 27/HB 1221.)

Effective date. — This Code section became effective January 1, 2011.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, Code

Section 48-7-167, as enacted by Ga. L. 2010, p. 662, § 27, was redesignated as Code Section 48-8-167.

ARTICLE 4

WATER AND SEWER PROJECTS AND COSTS TAX

Editor's notes. — Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known

and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

RESEARCH REFERENCES

Am. Jur. 2d. — 70C Am. Jur. 2d, Special or Local Assessments, § 32.

64 Am. Jur. 2d, Public Utilities, §§ 1 et seq., 122.

72 Am. Jur. 2d, State and Local Taxation, §§ 550, 660.

C.J.S. — 64A C.J.S., Municipal Corporations, § 2248.

73B C.J.S., Public Utilities, § 1 et seq.

85 C.J.S., Taxation, § 2182.

94 C.J.S., Waters, §§ 483 et seq., 543 et seq.

48-8-200. Definitions.

As used in this article, the term:

(1) "Building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(2) "Dealer" means a dealer as defined in Code Section 48-8-2.

(3) "Municipality" means a municipality in which the average waste-water flow of such municipality is not less than 85 million gallons per day.

(4) "Water and sewer projects and costs" means:

(A) Any capital outlay project or projects for the development, storage, treatment, purification, or distribution of water;

(B) Any capital outlay project or projects for storm-water and sewage collection and disposal systems;

(C)(i) With respect to any project or projects provided for under subparagraph (A) or (B) of this paragraph:

(I) Any cost of project or cost of any project as defined under paragraph (3) of Code Section 50-23-4; and

(II) Any maintenance and operation costs.

(ii) In no event shall any expenditure of tax proceeds pursuant to this subparagraph exceed annually an amount equal to the annual debt service payments of such municipality with respect to revenue bond indebtedness incurred for drinking water projects and storm-water and sewage collection and disposal projects; or

(D) Any combination of any of the foregoing. (Code 1981, § 48-8-200, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2010, p. 662, § 28/HB 1221.)

Law reviews. — For article on the 2004 amendment of this Code section, see 21 Ga. St. U.L. Rev. 226 (2004).

48-8-201. Intergovernmental contract for distribution of tax proceeds; approval of referendum by voters; cap on aggregate amount of tax.

(a)(1) In any county in which the provisions of paragraph (2) of subsection (a) of Code Section 48-8-6 will be applicable if the tax under Part 1 of Article 3 of this chapter is imposed pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, or a combination of such projects, the governing authority of a municipality, the majority of which is located wholly or partially in such county, may deliver or mail a written copy of a resolution of such municipal governing authority calling for the imposition by the county of the tax under Part 1 of Article 3 of this chapter pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, water and sewer projects and costs, or any combination thereof.

(2) Within ten days following the date of delivery of such resolution to the governing authority of such county, the governing authorities of such county and municipality may enter into an intergovernmental contract as authorized by Article IX, Section III of the Constitution which shall specify the allocation of the proceeds of the tax between such county and municipality according to the ratio the population of such municipality bears to the population of such county according to the United States decennial census of 2000 or any future such census so that such municipality's share of the total net proceeds shall be the percentage of the total population of such municipality divided by the total population of such county. Such intergovernmental contract shall specify that the proceeds allocated to the municipality shall only be expended for water and sewer projects and costs.

(3) Immediately following the entering into of the intergovernmental contract under paragraph (2) of this subsection, the governing authority of such county may select the next practicable date authorized under Code Section 21-2-540 for conducting a special election on the question of imposing such tax under Part 1 of Article 3 of this chapter. The governing authority of such county shall notify the county election superintendent by forwarding to the superintendent a copy of the resolution of the governing authority of such municipality calling for the imposition of the tax in such county. Following receipt of the resolution, the election superintendent shall issue the appropriate call for an election for the purpose of submitting the question of the imposition of the tax to the voters of such county in the manner specified in Code Section 48-8-111. If approved in such referendum, the tax shall be levied and imposed as provided in this Code section and Part 1 of Article 3 of this chapter.

(b) If the governing authority of the county takes no action under paragraph (2) or (3) of subsection (a) of this Code section, it shall provide notice thereof by resolution to the governing authority of the municipality not later than ten days following the date of delivery of such municipality's resolution to the county under subsection (a) of this Code section. Upon receipt by the governing authority of the municipality of such county resolution or if timely notice of no action is not provided by the governing authority of the county to the governing authority of the municipality, or if the county referendum is conducted but is not approved by the voters, the governing authority of any municipality in this state may, subject to the requirement of referendum approval and the other requirements of this article, immediately commence proceedings to seek to impose within the municipality a special sales and use tax for a limited period of time for the purpose of funding water and sewer projects and costs. Any tax imposed under this article shall be at the rate of 1 percent. Except as otherwise provided in this article, a tax imposed under this article shall correspond to the tax imposed by Article 1 of this chapter.

(c) In the event a tax imposed under this article is imposed only by the municipality:

(1) No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, except that a tax imposed under this article shall apply to:

(A) Sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2;

(B) The sale of food and food ingredients and alcoholic beverages as provided for in Code Section 48-8-3;

(C) The sale of natural or artificial gas used directly in the production of electricity which is subsequently sold, notwithstanding paragraph (70) of Code Section 48-8-3; and

(D) The furnishing for value to the public of any room or rooms, lodgings, or accommodations which is subject to taxation under Article 3 of Chapter 13 of this title; and

(2) A tax imposed under this article shall not apply to the sale of motor vehicles.

(d) On and after July 1, 2007, the aggregate amount of all excise taxes imposed under paragraph (5) of subsection (a) of Code Section 48-13-51 and all sales and use taxes shall not exceed 14 percent. (Code 1981, § 48-8-201, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2007, p. 309, § 10/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 29/HB 1221.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, “expanded” was substituted for “expanded” in the last sentence of paragraph (a)(2).

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of

Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U.L. Rev. 217 (2011).

48-8-202. Requirement of municipal ordinance or resolution authorizing tax; voter approval; form for ballot.

(a) A municipal governing authority voting to impose the tax authorized by this article shall notify the municipal election superintendent by forwarding to the superintendent a copy of the resolution or ordinance of the municipal governing authority calling for the imposition of the tax. Such ordinance or resolution shall specify the following:

(1) The maximum period of time of the tax, to be stated in calendar years or calendar quarters and not to exceed four years;

(2) The aggregate maximum cost of the project or projects and maintenance and operation costs which will be funded from the

proceeds of the tax, which aggregate maximum cost shall also be the maximum amount of net proceeds to be raised by the tax; and

(3) If general obligation debt is to be issued in conjunction with the imposition of the tax, as authorized by this article, the principal amount of the debt to be issued, the interest rate or rates or the maximum interest rate or rates which such debt is to bear, and the amount of principal to be paid in each year during the life of the debt.

(b) Upon receipt of the resolution or ordinance, the municipal election superintendent shall issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters of the municipality. The municipal election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The municipal election superintendent shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the legal organ of the county in which the majority of the municipal population resides or in a newspaper having general circulation in the municipality at least equal to that of the legal organ. If general obligation debt is to be issued in conjunction with the imposition of the tax, the notice published by the municipal election superintendent shall also include, in such form as may be specified by the municipal governing authority, the principal amount of the debt, the rate or rates of interest or the maximum rate or rates of interest the debt will bear, and the amount of principal to be paid in each year during the life of the debt; and such publication of notice by the municipal election superintendent shall take the place of the notice otherwise required by Code Section 36-80-11 or by subsection (b) of Code Section 36-82-1, which notice shall not be required.

(c)(1) The ballot shall have written or printed thereon the following:

“() YES Shall a special 1 percent sales and use tax be imposed in _____ for a period of time not to exceed _____ and for the

“() NO raising of not more than \$_____ for the purpose of funding water and sewer projects and costs?”

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

“If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ in the principal amount of \$_____ for the above purpose.”

(d) All persons desiring to vote in favor of imposing the tax shall vote "Yes" and all persons opposed to levying the tax shall vote "No." If more than one-half of the votes cast are in favor of imposing the tax, then the tax shall be imposed as provided in this article; otherwise, the tax shall not be imposed and the question of imposing the tax shall not again be submitted to the voters of the municipality until after 12 months immediately following the month in which the election was held; provided, however, that if an election date authorized under Code Section 21-2-540 occurs during the twelfth month immediately following the month in which such election was held, the question of imposing the tax may be submitted to the voters of the municipality on such date. The municipal election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. The municipal election superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from municipal funds.

(e)(1) If the proposal includes the authority to issue general obligation debt and if more than one-half of the votes cast are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given to the proper officers of the municipality; otherwise such debt shall not be issued. If the authority to issue such debt is so approved by the voters, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing authority of the municipality may incur such debt either through the issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as specifically provided otherwise in this article. If such debt is incurred through the execution of a promissory note or notes or other instrument or instruments, no validation proceedings shall be necessary and such debt shall be subject to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise in this article. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the municipality from the tax authorized by this article. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the municipality; and any liability on such debt which is not satisfied from the proceeds of the tax authorized by this article shall be satisfied from the general funds of the municipality. (Code 1981, § 48-8-202, enacted by Ga. L. 2004, p. 69, § 7.)

48-8-203. Imposition of tax following approval; termination of tax.

(a)(1) If the imposition of the tax is approved by referendum, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which the tax was approved by the voters.

(2) With respect to services which are regularly billed on a monthly basis, however, the resolution or ordinance imposing the tax shall become effective with respect to and the tax shall apply to the first regular billing period coinciding with or following the effective date specified in paragraph (1) of this subsection. A certified copy of the ordinance or resolution imposing the tax shall be forwarded to the commissioner so that it will be received within five business days after certification of the election results.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) If the resolution or ordinance calling for the imposition of the tax provided for the issuance of general obligation debt and such debt is the subject of validation proceedings, as of the end of the first calendar quarter ending more than 80 days after the date on which a court of competent jurisdiction enters a final order denying validation of such debt;

(2) On the final day of the maximum period of time specified for the imposition of the tax; or

(3) As of the end of the calendar quarter during which the commissioner determines that the tax will have raised revenues sufficient to provide to the municipality net proceeds equal to or greater than the amount specified as the maximum amount of net proceeds to be raised by the tax.

(c)(1) No municipality shall impose at any time more than a single 1 percent tax under this article.

(2) A municipality in which a tax authorized by this article is in effect may, while the tax is in effect, adopt a resolution or ordinance calling for a reimposition of a tax as authorized by this article upon the termination of the tax then in effect; and a referendum may be held for this purpose while the tax is in effect. Proceedings for such reimposition shall not be conducted more than three times; shall be in the same manner as proceedings for the initial imposition of the tax as provided for in Code Section 48-8-202 and shall be solely within the discretion of the governing authority of the municipality without regard to any requirement of county participation otherwise specified

under subsection (a) of Code Section 48-8-201. Such newly authorized tax shall not be imposed until the expiration of the tax then in effect; provided, however, that in the event of emergency conditions under which a municipality is unable to conduct a referendum so as to continue the tax then in effect without interruption, the commissioner may, if feasible administratively, waive the limitations of subsection (a) of this Code section to the minimum extent necessary so as to permit the reimposition of a tax, if otherwise approved as required under this Code section, without interruption, upon the expiration of the tax then in effect.

(3) Following the expiration of a tax under this article which has been renewed three times under paragraph (2) of this subsection, a municipality shall not be authorized to initiate proceedings for the reimposition of a tax under this article or to reimpose such tax. (Code 1981, § 48-8-203, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2010, p. 662, § 30/HB 1221; Ga. L. 2010, p. 1163, § 6/HB 1069.)

48-8-204. Administration and collection of tax; deduction.

A tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of the municipality imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or in behalf of the municipality or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50. (Code 1981, § 48-8-204, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2007, p. 309, § 11/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 31/HB 1221.)

48-8-205. Identification of location of retail establishment when submitting sales and use tax return.

Each sales and use tax return remitting sales and use taxes collected under this article shall separately identify the location of each retail establishment at which any of the sales and use taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all sales and use taxes imposed by this article are collected and distributed according to situs of sale. (Code 1981, § 48-8-205, enacted by Ga. L. 2004, p. 69, § 7.)

48-8-206. Disbursement of proceeds.

The proceeds of the tax collected by the commissioner in each municipality under this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) The remaining proceeds of the tax shall be distributed to the governing authority of the municipality imposing the tax. (Code 1981, § 48-8-206, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2005, p. 60, § 48/HB 95.)

48-8-207. Payment of tax on personal property in another local tax jurisdiction; collection of difference.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The commissioner may require such proof of payment in another local tax jurisdiction as the commissioner deems necessary and proper. No credit shall be granted, however, against the tax imposed under this article for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the municipality or in a special district which includes the municipality; and taxes so paid in another jurisdiction shall be credited first against the tax levied under Article 2 of this chapter, if applicable, then

against the tax levied under Article 3 of this chapter, if applicable, then against the tax levied under Article 2A of this chapter, if applicable, and then against the tax levied under this article. (Code 1981, § 48-8-207, enacted by Ga. L. 2004, p. 69, § 7.)

48-8-208. No tax on products ordered and delivered outside geographical area of municipality.

No tax provided for in this article shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the municipality in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety. (Code 1981, § 48-8-208, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2012, p. 580, § 22/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted "Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety" for "Federal

Highway Administration or the Georgia Public Service Commission" at the end of this Code section.

48-8-209. No tax on construction materials included in bid prior to approval of additional tax.

No tax provided for in this article shall be imposed upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to the voters' approval of the levy of the tax and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the tax. (Code 1981, § 48-8-209, enacted by Ga. L. 2004, p. 69, § 7.)

48-8-210. Commissioner authorized to issue rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax authorized to be imposed by this article. (Code 1981, § 48-8-210, enacted by Ga. L. 2004, p. 69, § 7.)

48-8-211. Impact on other taxes.

The tax authorized by this article shall be in addition to any other local sales and use tax. The imposition of any other local sales and use

tax within a county, municipality, or special district shall not affect the authority of a municipality to impose the tax authorized by this article and the imposition of the tax authorized by this article shall not affect the imposition of any otherwise authorized local sales and use tax within the county, municipality, or special district. (Code 1981, § 48-8-211, enacted by Ga. L. 2004, p. 69, § 7.)

48-8-212. Utilization of tax proceeds by municipality; record keeping; use for general obligation debt.

(a) The proceeds received from the tax authorized by this article shall be used by the municipality exclusively for:

(1) Water and sewer projects and costs;

(2) The repayment of general obligation indebtedness incurred in conjunction with the imposition of the tax authorized by this article; or

(3) The repayment of any loans made to such municipality with respect to such water and sewer projects and costs. Such proceeds shall be kept in a separate account from other funds of the municipality and shall not in any manner be commingled with other funds of the municipality prior to expenditure.

(b) The governing authority of the municipality shall maintain a record of each and every water and sewer project and cost for which the proceeds of the tax are used. In each annual audit a schedule shall be included which shows for each ongoing such project the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The auditor's report on the financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(c) No general obligation debt shall be issued in conjunction with the imposition of the tax unless the municipal governing authority determines that, and if the debt is to be validated it is demonstrated in the validation proceedings that, during each year in which any payment of principal or interest on the debt comes due the municipality will receive from the tax authorized by this article net proceeds sufficient to fully satisfy such liability. General obligation debt issued under this article shall be payable first from the separate account in which are placed the proceeds received by the municipality from the tax authorized by this article. Such debt, however, shall constitute a pledge of the full faith,

credit, and taxing power of the municipality; and any liability on said debt which is not satisfied from the proceeds of the tax authorized by this article shall be satisfied from the general funds of the municipality.

(d) The resolution or ordinance calling for imposition of the tax authorized by this article may specify that all of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. If the resolution or ordinance so provides, then such proceeds shall be used solely for such purpose except as provided in subsection (f) of this Code section.

(e) The resolution or ordinance calling for the imposition of the tax authorized by this article may specify that a part of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. In such a case no part of the net proceeds from the tax received in any year shall be used for other water and sewer projects until all debt service requirements of the general obligation debt for that year have first been satisfied from the account in which the proceeds of the tax are placed.

(f)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of payment of general obligation debt issued in conjunction with the imposition of the tax, then any net proceeds of the tax in excess of the amount required for final payment of such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

(B) If the municipality receives from the tax net proceeds in excess of the maximum cost of the project or projects calling for the imposition of the tax or in excess of the actual cost of such project or projects, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

(C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section 48-8-203 by reason of denial of validation of debt, then all net proceeds received by the municipality from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

(2) Excess proceeds subject to this subsection shall be used solely for the purpose of reducing any indebtedness of the municipality other than indebtedness incurred pursuant to this article. If there is no such other indebtedness or, if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds shall next be paid into the general fund of the municipality, it being the intent that any funds so paid into the general fund of the municipality be used for the purpose of reducing ad valorem taxes. (Code 1981, § 48-8-212, enacted by Ga. L. 2004, p. 69, § 7.)

ARTICLE 5

SPECIAL DISTRICT TRANSPORTATION SALES AND USE TAX

Effective date. — Part 1 of this article became effective June 2, 2010. Part 2 of this article became effective January 1, 2011.

Editor's notes. — Ga. L. 2010, p. 778,

§ 1/HB277, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Transportation Investment Act of 2010.'"

PART 1

IN GENERAL

48-8-240. Findings; purpose.

The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments. The General Assembly finds that the design and construction of transportation projects is a critical local government service for which adequate funding is not presently available. Many transportation projects cross multiple jurisdictional boundaries and must be coordinated in their design and construction. The General Assembly finds that the most efficient means to coordinate and fund such projects is through the creation of special districts that correspond with the boundaries of existing regional commissions. The purpose of this article is to provide for special districts that will enable the coordinated design and construction of transportation projects that will develop and promote the essential public interests of the state and its citizens at the state, regional, and local levels. The General Assembly intends through the creation of such special districts to enable the citizens within each district to decide in an election whether to authorize the imposition of a special district transportation sales and use tax to fund the projects on an investment list collaboratively developed by the affected local governments and the state. This article shall be construed liberally to achieve its purpose. (Code 1981, § 48-8-240, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-241. Creation of special districts; tax rate.

(a) There are created within this state 12 special districts. The geographical boundary of each special district shall correspond with and shall be conterminous with the geographical boundary of the applicable region of the 12 regional commissions provided for in subsection (f) of Code Section 50-8-4.

(b) When the imposition of a special district sales and use tax is authorized according to the procedures provided in this article within a

special district, subject to the requirement of referendum approval and the other requirements of this article, a special sales and use tax shall be imposed within the special district for a period of ten years which tax shall be known as the special district transportation sales and use tax.

(c) Nothing in this article shall be construed as limiting the establishment of a fund or funds which would provide at least 20 years of maintenance and operation costs from proceeds of the special district transportation sales and use tax used to construct, finance, or otherwise develop transit capital projects; provided, however, that the Metropolitan Atlanta Rapid Transit Authority, created by an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, shall not be authorized to use any proceeds from the special district transportation sales and use tax for expenses of maintenance and operation of such portions of the transportation system of such authority in existence on January 1, 2011.

(d) Any tax imposed under this article shall be at the rate of 1 percent. Except as to rate, a tax imposed under this article shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, except that a tax imposed under this article shall not apply to:

(1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road farm or agricultural equipment, or locomotives;

(2) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport;

(3) The sale or use of fuel that is used for propulsion of motor vehicles on the public highways. For purposes of this paragraph, a motor vehicle means a self-propelled vehicle designed for operation or required to be licensed for operation upon the public highways;

(4) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale; or

(5) For motor fuel as defined under paragraph (9) of Code Section 48-9-2 for public mass transit.

The tax imposed pursuant to this article shall only be levied on the first \$5,000.00 of any transaction involving the sale or lease of a motor vehicle. The tax imposed pursuant to this article shall be subject to any sales and use tax exemption which is otherwise imposed by law; provided, however, that the tax levied by this article shall be applicable to the sale of food and food ingredients as provided for in paragraph (57) of Code Section 48-8-3. (Code 1981, § 48-8-241, enacted by Ga. L. 2010, p. 778, § 6/HB 277; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, in the concluding paragraph, in the last sentence, a comma was substituted for a semicolon following “provided”, “food ingredients” was substituted for “beverages”, and “paragraph (57)” was substituted for “division (57)(D)(i)”.

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U.L. Rev. 217 (2011).

48-8-242. Definitions.

As used in this article, the term:

(1) “Commission” means the Georgia State Financing and Investment Commission;

(2) “Cost of project” means:

(A) All costs of acquisition, by purchase or otherwise, construction, assembly, installation, modification, renovation, extension, rehabilitation, operation, or maintenance incurred in connection with any project of the special district or any part thereof;

(B) All costs of real property or rights in property, fixtures, or personal property used in or in connection with or necessary for any project of the special district or for any facilities related thereto, including but not limited to the cost of all land, interests in land, estates for years, easements, rights, improvements, water rights, and connections for utility services; the cost of fees, franchises, permits, approvals, licenses, and certificates; the cost of securing any such franchises, permits, approvals, licenses, or certificates; the cost of preparation of any application therefor; and the cost of all fixtures, machinery, equipment, furniture, and other property used in or in connection with or necessary for any project of the special district;

(C) All costs of engineering, surveying, planning, environmental assessments, financial analyses, and architectural, legal, and accounting services and all expenses incurred by engineers, surveyors, planners, environmental scientists, fiscal analysts, architects, attorneys, accountants, and any other necessary technical personnel in connection with any project of the special district;

(D) All expenses for inspection of any project of the special district;

(E) All fees of any type charged to the special district in connection with any project of the special district;

(F) All expenses of or incidental to determining the feasibility or practicability of any project of the special district;

(G) All costs of plans and specifications for any project of the special district;

(H) All costs of title insurance and examinations of title with respect to any project of the special district;

(I) Repayment of any loans for the advance payment of any part of any of the foregoing costs, including interest thereon and any other expenses of such loans;

(J) Administrative expenses of the special district and such other expenses as may be necessary or incidental to any project of the special district or the financing thereof; and

(K) The establishment of a fund or funds or such other reserves as the commission may approve with respect to the financing and operation of any project of the special district.

Any cost, obligation, or expense incurred for any of the purposes specified in this paragraph shall be a part of the cost of the project of the special district and may be paid or reimbursed as otherwise authorized by this article.

(3) "County" means any county created under the Constitution or laws of this state.

(4) "Dealer" means a dealer as defined in paragraph (8) of Code Section 48-8-2.

(5) "Director" means the director of planning provided for in Code Section 32-2-43.

(6) "LARP factor" means the sum of one-fifth of the ratio between the population of a local government's jurisdiction and the total population of the special district in which such local government is located plus four-fifths of the ratio between the paved and unpaved centerline road miles in the local government's jurisdiction and the total paved and unpaved centerline road miles in the special district in which such local government is located.

(7) "Local government" means any municipal corporation, county, or consolidated government created by the General Assembly or pursuant to the Constitution and laws of this state.

(8) "Metropolitan planning organization" or "MPO" means the policy board of an organization created and designated to carry out the metropolitan transportation planning process as defined in 23 C.F.R. Section 450.

(9) "Municipal corporation" means any incorporated city or town in this state.

(10) "Project" means, without limitation, any new or existing airports, bike lanes, bridges, bus and rail mass transit systems, freight and passenger rail, pedestrian facilities, ports, roads, terminals, and all activities and structures useful and incident to providing, operating, and maintaining the same. The term shall also include direct appropriations to a local government for the purpose of serving as a local match for state or federal funding.

(11) "Regional transportation roundtable" or "roundtable" means a conference of the local governments of a special district created pursuant to this article held at a centralized location within the district as chosen by the director for the purpose of establishing the investment criteria and determining projects eligible for the investment list for the special district. The regional transportation roundtable shall consist of the chairperson, sole commissioner, mayor, or chief executive officer of the county governing authority from each county in the special district. In the event any county in the special district has a consolidated government, the consolidated government shall elect a second elected member of the county consolidated government to the regional roundtable. In counties without a consolidated government, the second member of the regional roundtable from that county shall be one mayor elected by the mayors of the county; provided, however, that, in the event such an election ends in a tie, the mayor of the municipal corporation with the highest population determined using the most recently completed United States decennial census shall be deemed to have been elected as a representative unless that mayor is already part of the roundtable. In such case, the mayor of the municipal corporation with the second highest population shall be deemed to have been elected as a representative. If a county has more than 90 percent of its population residing in municipal corporations, such county shall have the mayor of the municipal corporation with the highest population determined using the most recently completed United States decennial census as an additional representative. The regional transportation roundtable shall elect five representatives from among its members to serve as an executive committee. The executive committee shall also include two members of the House of Representatives selected by the chairperson of the House Transportation Committee and one member of the Senate selected by the chairperson of the Senate Transportation Committee. Each member of the General Assembly appointed to the executive committee shall be a nonvoting member of the executive committee and shall represent a district which lies wholly or partially within the region represented by the executive committee. The executive committee shall not have more than one representative

from any one county, but any member of the General Assembly serving on the executive committee shall not count as a representative of his or her county.

(12) “Special Regional Transportation Funding Election Act” means an Act specifically and exclusively enacted for the purpose of ordering that a referendum be held for the reimposition of the special district transportation sales and use tax within the region that includes the districts, in their entirety or any portion thereof, of the members from a local legislative delegation in the General Assembly. A majority of the signatures of the legislative delegation for a majority of the counties within the region shall be required for the bill to be placed upon the local calendar of each chamber. This method shall be exclusively used for this purpose and no other bill shall be placed or voted upon on the local calendar utilizing this method of qualification for placement thereon. This Act shall be treated procedurally by the General Assembly as a local Act and all counties within the region shall receive the legal notice requirements of a local Act.

(13) “State-wide strategic transportation plan” means the official state-wide transportation plan as defined in paragraph (6) of subsection (a) of Code Section 32-2-22.

(14) “State-wide transportation improvement program” means a state-wide prioritized listing of transportation projects as defined in paragraph (7) of subsection (a) of Code Section 32-2-22.

(15) “Transportation improvement program” means a prioritized listing of transportation projects as defined in paragraph (8) of subsection (a) of Code Section 32-2-22. (Code 1981, § 48-8-242, enacted by Ga. L. 2010 p. 778, § 6/HB 277 and Ga. L. 2010, p. 818, § 3/SB 520.)

Code Commission notes. — The enactment of this Code section by Ga. L. 2010, p. 778, § 6, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 818, § 3. See County of

Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974). Pursuant to Code Section 28-9-5, in 2010, “paragraph (8)” was substituted for “paragraph (3)” in paragraph (4).

48-8-243. Criteria for development of investment list of projects and programs; report; gridlock.

(a) Within 60 calendar days following approval by the Governor of the state-wide strategic transportation plan, the State Transportation Board shall consider the state-wide strategic transportation plan in accordance with the provisions of subsection (c) of Code Section 32-2-22. Upon approval of the state-wide strategic transportation plan by the State Transportation Board, the director shall provide in written form

to the local governments and any MPO's within each special district across the state recommended criteria for the development of an investment list of projects and programs. The establishment of such criteria shall comport with the investment policies provided in subsection (a) of Code Section 32-2-41.1 and the state-wide strategic transportation plan. The recommended criteria shall include performance goals, allocation of investments in alignment with performance, and execution of projects. The state fiscal economist shall develop an estimate of the proceeds of the special district transportation sales and use tax for each special district using financial data supplied by the department. Such estimate shall include reasonable ranges of anticipated growth, if any. The director shall include such estimates and ranges in the recommended criteria for developing the draft investment list. Any local government or MPO desiring to submit comments on the recommended criteria shall make such submission to the director no later than September 30, 2010. On or before November 10, 2010, the mayors in each county shall elect the mayoral representative to the regional transportation roundtable and notify the county commission chairperson and the director of that mayor's name. The director shall accept comments from any MPO located wholly or partially within each special district in finalizing the recommended district criteria in a written report on or before November 15, 2010. Such report shall also include notice of the date, time, and location of the first regional transportation roundtable for each special district for the purpose of considering the recommended district criteria and for electing members of the executive committee for each special district. Any amendment to the recommended criteria, approval of such criteria, and election of the executive committee shall be enacted by a majority vote of the representatives present at the roundtable meeting. Upon approval of the criteria, the director shall promptly deliver a report to the commissioner of transportation, local governments, any MPO located wholly or partially within each special district and the members of the General Assembly whose districts lie wholly or partially within each special district detailing the criteria approved by the roundtable.

(b) With regard to any area of a special district that is not part of an MPO, following receipt of the report provided for in subsection (a) of this Code section, and after receiving comments, if any, from members of the General Assembly whose districts lie wholly or partially within such area, the local governments in such area may submit projects to the director to assemble a list of example investments for such special district that comport with the special district's investment criteria. With regard to any area of a special district that is part of an MPO, following receipt of the report provided for in subsection (a) of this Code section, and after receiving comments, if any, from members of the General Assembly whose districts lie wholly or partially within such

area, the local governments may submit projects to the director and to the MPO for the director to use to assemble a list of example investments for such special district that comport with the special district's investment criteria. The list of example investments for each special district shall not be required to be fiscally constrained within the budget of the revenues projected to be generated by each special district's sales and use tax and shall be submitted to the executive committee for each regional transportation roundtable for consideration. The executive committee in collaboration with the director shall choose from the list of example investments to create the draft investment list, which shall be approved by majority vote of the executive committee. Such draft investment list shall be fiscally constrained within the ranges of revenues projected to be generated by the special district sales and use tax, as determined by the state fiscal economist. The special district's draft investment list as approved by the executive committee shall be considered by the regional transportation roundtable. The director shall deliver the draft investment list to the local governments, MPO's, and members of the General Assembly whose districts lie wholly or partially within each special district for each special district not later than August 15, 2011. The director shall include in the draft investment list a statement of the specific public benefits to be expected upon the completion of each project on the investment list and how the special district's investment criteria are furthered by each project. Examples of specific public benefits include, but are not limited to, congestion mitigation, increased lane capacity, public safety, and economic development. The director shall include in such delivery notice of the date, time, and location of each district's executive committee meeting and final regional transportation roundtable. Prior to holding the final regional transportation roundtable, the executive committee shall hold, after proper notice to the public, at least two public meetings in the region for the purpose of receiving public comment on the draft regional investment list. The executive committee shall prepare and deliver to all members of the regional roundtable and the director a summary of the public comment on the regional investment list. The local governments, MPO's, and members of the General Assembly whose districts lie wholly or partially within such special district may submit comments on the draft investment list addressed to both the director and the executive committee no later than two weeks prior to the dates of the final regional transportation roundtable and the executive committee meeting, respectively, for the special district. At the final regional transportation roundtable, the draft investment list approved by the executive committee shall be considered for approval by a majority vote of the representatives present at the roundtable. Should the roundtable reject the draft investment list approved by the executive committee, the roundtable then may negotiate amendments that meet the district's investment

criteria to the draft investment list, which shall be chosen from the list of example investments for each special district, each voted on separately and requiring a majority vote of the representatives present at the roundtable for approval. Upon consideration of all offered amendments, upon motion, the roundtable shall vote as to the approval of the amended draft list, requiring a majority vote of the representatives present at the roundtable. The approved investment list, if any, shall be provided to the director. On or before October 15, 2011, the director shall deliver such list to the commission, the commissioner of transportation, the executive director of the Georgia Regional Transportation Authority, local governments, MPO's, and members of the General Assembly whose districts lie wholly or partially within each special district for each special district. The approved investment list shall include:

- (1) The specific transportation projects to be funded;
- (2) The anticipated schedule of such projects;
- (3) The approximate cost of such projects; and
- (4) The estimated amount of net proceeds to be raised by the tax including the amount of proceeds to be distributed to local governments pursuant to subsection (e) of Code Section 48-8-249.

If a roundtable does not approve the original draft investment list or an amended draft investment list on or before October 15, 2011, then a special district gridlock shall be declared by the director and no election shall be held in such special district. The question of levying the tax shall not be submitted to the voters of the special district until after 24 months immediately following the month in which the special district gridlock was reached.

(c) In the event a special district gridlock is declared, the local governments in such special district shall be required to provide a 50 percent match for any local maintenance and improvement grants by the Department of Transportation. Such 50 percent match requirement shall remain in place until the special district roundtable approves an investment list meeting the special district's investment criteria and an election is held within the special district on the levy of the special district transportation sales and use tax. (Code 1981, § 48-8-243, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

PART 2

ELECTION, IMPOSITION, AND PROCEDURES

Effective date. — This part became effective January 1, 2011.

48-8-244. Election; ballot.

(a) Simultaneously with the director's delivery of the approved investment list in accordance with subsection (b) of Code Section 48-8-243, the roundtable shall deliver a notice to the election superintendents of each county within the respective special districts. Upon receipt of the notice, the election superintendents shall issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters within each special district. The election superintendents shall issue the call and shall conduct the election in the manner authorized under Code Section 21-2-540. The first election shall be held on the date of the general state-wide primary in 2012. The election superintendents shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the official organs of their respective counties.

(b) The ballot submitting the question of the levy of the special district transportation tax authorized by this article to the voters within each special district shall have written or printed thereon the following:

- “() YES Shall _____ County's transportation system and the transportation network in this region and the state be improved by providing for a 1 percent special district transportation sales and use tax for the purpose of transportation projects and programs for a period of ten years?”

(c) All persons desiring to vote in favor of levying the tax shall vote “Yes” and all persons opposed to levying the tax shall vote “No.” If more than one-half of the votes cast throughout the entire special district are in favor of levying the tax, then the tax shall be levied as provided in this article; otherwise the tax shall not be levied and the question of levying the tax shall not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. Each election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. Each election superintendent shall canvass the returns from his or her county, declare the result of the election in that county, and certify the result to the Secretary of State. The Secretary of State shall compile the results from each county in the special district, declare the result of the election in the special district, and certify the result to the governing authority of each local government and MPO within the special district and the state revenue commissioner. The expense of the election in each county within each special district shall be paid from funds of each county.

(d) In the event a special district sales and use tax election is held and the voters in a special district do not approve the levy of the special district transportation sales and use tax, the local governments in such special district shall be required to provide a 30 percent match for any local maintenance and improvement grants by the Department of Transportation for transportation projects and programs for at least 24 months and until such time as a special district sales and use tax is approved. In the event the voters in a special district approve the levy of the special district transportation sales and use tax, the local governments in such special district shall be required to provide a 10 percent match for any local maintenance and improvement grants by the Department of Transportation for transportation projects and programs for the duration of the levy of the special district transportation sales and use tax. (Code 1981, § 48-8-244, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-244.1. Effect of special district levy on state allocation of funds under Code Section 32-5-27.

The approval of the levy of the special district transportation sales and use tax in a special district shall not in any way diminish the percentage of funds allocated to a special district or any of the local governments within a special district under the provisions of subsection (c) of Code Section 32-5-27. The amount of funds expended in a special district shall not be decreased due to the use of proceeds from the special district transportation sales and use tax to construct transportation projects that have a high priority in the state-wide strategic transportation plan. If a special district constructs a project on the approved investment list using proceeds from the special district tax, then the state funding under subsection (c) of Code Section 32-5-27 shall not be diverted to priority projects in other special districts. (Code 1981, § 48-8-244.1, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-245. Collection of tax; cessation of tax.

(a) If the imposition of the special district transportation sales and use tax is approved at the special election, the collection of such tax shall begin on the first day of the next succeeding calendar quarter beginning more than 80 days after the date of the election. With respect to services which are regularly billed on a monthly basis, however, the tax shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in the previous sentence.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) On the final day of the ten-year period of time specified for the imposition of the tax; or

(2) As of the end of the calendar quarter during which the state revenue commissioner determines that the tax has raised revenues sufficient to provide to the special district net proceeds equal to or greater than the amount specified as the estimated amount of net proceeds to be raised by the special district transportation tax.

(c)(1) No more than a single 1 percent tax under this article may be collected at any time within a special district.

(2) Upon the enactment by the General Assembly of a Special Regional Transportation Funding Election Act and the adoption of resolutions by the governing bodies of a majority of the counties within a special district in which a tax authorized by this article is in effect, an election may be held for the reimposition of the tax while the tax is in effect. Proceedings for the development of an investment list and for the reimposition of a tax shall be in the same manner as provided for in Code Section 48-8-243.

(3) Following the expiration of the special district transportation sales and use tax under this article, or following a special election in which voters in a special district rejected the imposition of the tax, upon the passage by the General Assembly of a Special Regional Transportation Funding Election Act and the adoption of resolutions by the governing bodies of a majority of counties within a special district, an election may be held for the imposition of a tax under this article in the same manner as provided in this article for the initial imposition of such tax. Such subsequent election shall be held on the date of a state-wide general primary. The development of the investment list for such special district shall follow the dates established in Code Section 48-8-243 with the years adjusted appropriately, and such schedule shall be posted on a website developed by the state revenue commissioner to be used exclusively for matters related to the special district transportation sales and use tax within 30 days of the later of the state revenue commissioner's receipt of notice from the final county governing body required to adopt a resolution or of the passage of the Special Regional Transportation Funding Election Act by the General Assembly. (Code 1981, § 48-8-245, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-246. Collection and administration of tax by state revenue commissioner.

A tax levied pursuant to this article shall be exclusively administered and collected by the state revenue commissioner for the use and benefit of the special district imposing the tax. Such administration and

collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter; provided, however, that all moneys collected from each taxpayer by the state revenue commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the state revenue commissioner may rely upon a representation by or in behalf of the special district or the Secretary of State that such a tax has been validly imposed, and the state revenue commissioner and the state revenue commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50. (Code 1981, § 48-8-246, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-247. Remittance of taxes.

Each sales tax return remitting taxes collected under this article shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the state revenue commissioner that all taxes imposed by this article are collected and distributed according to situs of sale. (Code 1981, § 48-8-247, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-248. Disbursement of proceeds.

The proceeds of the tax collected by the state revenue commissioner in each special district under this article shall be disbursed as soon as practicable after collection to the Georgia State Financing and Investment Commission to be maintained in a trust fund and administered by the commission on behalf of the special district imposing the tax. Such proceeds for each special district shall be kept separate from other funds of the commission and shall not in any manner be commingled with other funds of the commission. (Code 1981, § 48-8-248, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-249. Use of proceeds within special district exclusively for projects on approved investment list; contracts.

(a) The proceeds received from the tax authorized by this article shall be used within the special district receiving proceeds of the tax

exclusively for the projects on the approved investment list for such district as provided in subsection (b) of Code Section 48-8-243. Authorized uses of tax proceeds in connection with such projects shall include the cost of project defined in paragraph (2) of Code Section 48-8-242.

(b) The commission shall be responsible for the proper application of the proceeds received from the tax authorized by this article for the approved investment list for each special district. The commission shall delegate the management of the budget, schedule, execution, and delivery of the projects contained in the approved investment list as follows:

(1) The commission shall contract with the Department of Transportation for all transportation projects except bus and rail mass transit systems and passenger rail in any special district the boundaries of which are not wholly contained within a single MPO; and

(2) The commission shall contract with the Georgia Regional Transportation Authority only for projects that are bus and rail mass transit systems and passenger rail within any special district the boundaries of which are wholly contained within a single MPO.

Upon entering into contracts with the Department of Transportation or the Georgia Regional Transportation Authority as provided above, the commission shall dispense funds upon the request of the commissioner of transportation or the executive director of the Georgia Regional Transportation Authority, which request shall include certification of the completion of the project or project element for which funds are requested. Payment shall be made promptly upon approval by the construction division or the financing and investment division of the commission, and such payments shall not require any other official action by the commission. The use of funds so dispensed shall be subject to review and audit by the construction division and the financing and investment division of the commission and action by the commission upon receipt of complaint or if otherwise warranted. The Department of Transportation and Georgia Regional Transportation Authority shall consult with the commission on at least a quarterly basis regarding the progress and performance in the execution, schedule, and delivery of projects on the approved investment list.

(c) In managing the execution, schedule, and delivery of the projects on the approved investment list for a special district, the Department of Transportation or Georgia Regional Transportation Authority, as appropriate, shall determine whether a project should be designed and constructed by the Department of Transportation, by a local government, or by another public or private entity. In making such determination the following shall be considered:

- (1) Whether such project is on the state-wide transportation improvement program, the state-wide strategic transportation plan, or a transportation improvement program;
- (2) The type and estimated cost of the project;
- (3) The location of the project and whether it encompasses multiple jurisdictions;
- (4) The experience of a local government or governments or a public or private entity in designing and constructing such project as set forth in an application in a form to be provided by the commissioner of transportation or the executive director of the Georgia Regional Transportation Authority; and
- (5) The recommendation of the MPO, if any, for such special district.

Following the decision, the Department of Transportation, the local government or governments, or another public or private entity as determined under this subsection shall contract for implementing the projects in accordance with applicable state and federal requirements.

(d) The commission shall maintain or cause to be maintained an adequate record-keeping system for each project funded by a special district transportation sales and use tax. An annual audit shall be paid for by each special district and conducted by an independent auditing firm as selected by the commission. Such audit shall include a schedule which shows for each such project the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. Such audit shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The audit report on the financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(e) Twenty-five percent of the proceeds received from the tax authorized by this article shall be distributed to the local governments within the special district in which the tax is imposed if such special district's boundaries are not conterminous with an MPO. Fifteen percent of the proceeds received from the tax authorized by this article shall be distributed to the local governments within the special district in which the tax is imposed if such special district's boundaries are wholly contained within a single MPO. Such percentages shall be allocated to each local government by multiplying the LARP factor of each local government by the total amount of funds to be distributed to all the local governments in the special district. Proceeds described in this

subsection shall be distributed to the local governments on an ongoing basis as they are received by the commission. Such proceeds shall be used by the local governments only for transportation projects as defined in paragraph (10) of Code Section 48-8-242 and may also serve as the local match as required for state transportation projects and grants. If a special district receives from the tax net proceeds in excess of the investment list approved by the roundtable for the imposition of the tax or in excess of the actual cost of the project or projects on such investment list, then such excess proceeds shall be distributed among the local governments within the special district in accordance with this subsection. (Code 1981, § 48-8-249, enacted by Ga. L. 2010, p. 778, § 6/HB 277; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in the first sentence of subsection (e).

48-8-250. Report.

Not later than December 15 of each year, the state revenue commissioner shall publish, on the website created pursuant to paragraph (3) of subsection (c) of Code Section 48-8-245, a simple, nontechnical report which shows for each project in the investment list approved by the director the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year with respect to each such project. The report shall also include a statement of what corrective action the commissioner of transportation and the executive director of the Georgia Regional Transportation Authority intend to implement with respect to each project which is underfunded or behind schedule and a statement of any surplus funds which have not been expended for a project. (Code 1981, § 48-8-250, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-251. Citizens Review Panel; membership; vacancy; recommendations; report.

(a) There is created a Citizens Review Panel for each special district in which voters approved the levy of the special district sales and use tax to be composed of three citizen members appointed by the Speaker of the House of Representatives and two citizen members appointed by the Lieutenant Governor. Each member must be a resident of the special district of which Citizens Review Panel they are appointed to serve.

(b) In the event that any vacancy for any cause shall occur in the membership of the committee, such vacancy shall be filled by an

appointment made by the official authorized by law to make such appointment within 45 days of the occurrence of such vacancy.

(c) The panel shall, by majority vote of those members present and voting, elect from their number a chairperson and vice chairperson who shall serve at the pleasure of the panel.

(d) The panel shall meet in regular session at least three days each year either at the state capitol in Atlanta or at such other meeting place within the state and may have such other additional meetings as may be called by the chairperson or by a majority of the members of the panel upon reasonable written notice to all members of the panel. Further, the chairperson of the panel is authorized from time to time to call meetings of subcommittees of the panel which are established by panel policy at places inside or outside the state when, in the opinion of the chairperson, the meetings of the subcommittee are needed to attend properly to the panel's business. A majority of the panel shall constitute a quorum for the transaction of all business. Any power of the panel may be exercised by a majority vote of those members present at any meeting at which there is a quorum.

(e) Members shall receive for each day of actual attendance at meetings of the panel and the subcommittee meetings the per diem and transportation costs prescribed in Code Section 45-7-21, and a like sum shall be paid for each day actually spent in studying the transportation needs of the state or attending other functions as a representative of the panel, not to exceed ten days in any calendar year, but no member shall receive such per diem for any day for which such member receives any other per diem pursuant to such Code section. In addition, members shall receive actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile in connection with such attendance and study. Such per diem and expense shall be paid from the funds of the special district's revenues from the special district sales and use tax upon presentation, by members of the panel, of vouchers approved by the chairperson.

(f) The panel shall be charged with review of the administration of the projects and programs included on the approved investment list. The panel may make such recommendations to and require such reports from the Department of Transportation, the Georgia Regional Transportation Authority, any other agency or instrumentality of the state, any political subdivision of the state, and any agency or instrumentality of such political subdivisions as it may deem appropriate and necessary from time to time in the interest of the region.

(g) Upon the completion of a project on the investment list, the panel shall annually review the specific public benefits identified in the investment list to ascertain the degree to which such benefits have been

attained. This benefit review report shall be delivered to the director and the state revenue commissioner and shall be published on the website created pursuant to paragraph (3) of subsection (c) of Code Section 48-8-245.

(h) Beginning January 1, 2013, and annually thereafter, the panel shall provide a report to the General Assembly of its actions during the previous year. The report shall be available for public inspection on the website created pursuant to paragraph (3) of subsection (c) of Code Section 48-8-245. The report shall include, but not be limited to, an update on the progress on each project on the investment list for the region, including the amount of funds spent on each project. (Code 1981, § 48-8-251, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-252. Tax paid in another jurisdiction.

Where a special district transportation sales and use tax under this article has been paid with respect to tangible personal property by the purchaser either in another special district within the state or in a tax jurisdiction outside the state, the tax may be credited against the tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The state revenue commissioner may require such proof of payment in another local tax jurisdiction as he or she deems necessary and proper. No credit shall be granted, however, against the tax imposed under this article for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other sales and use tax levied in the special district. (Code 1981, § 48-8-252, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-253. Nonimposition of tax on property ordered by and delivered to purchaser outside special district; conditions of delivery.

No tax provided for in this article shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety. (Code 1981, § 48-8-253, enacted by Ga. L. 2010, p. 778, § 6/HB 277; Ga. L. 2012, p. 580, § 23/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted "Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety" for "Surface

Transportation Board or the Georgia Public Service Commission" at the end of this Code section.

48-8-254. "Building and construction materials" defined; inapplicability of tax to certain sales or uses of building and construction materials.

(a) As used in this Code section, the term "building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No tax provided for in this article shall be imposed upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to the voters' approval of the levy of the tax and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the tax. (Code 1981, § 48-8-254, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-255. Authority to promulgate rules and regulations.

Subject to the approval of the House and Senate Transportation Committees, the state revenue commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the special district transportation sales and use tax authorized by this article. (Code 1981, § 48-8-255, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

48-8-256. Special district tax not subject to allocation or balancing of state and federal funds.

The tax authorized by this article shall not be subject to any allocation or balancing of state and federal funds provided for by general law, nor may such proceeds be considered or taken into account in any such allocation or balancing. (Code 1981, § 48-8-256, enacted by Ga. L. 2010, p. 778, § 6/HB 277.)

ARTICLE 6

GEORGIA TOURISM DEVELOPMENT

Effective date. — This article became § 3/HB234, not codified by the General Assembly, provides for severability.
effective July 1, 2011.

Editor's notes. — Ga. L. 2011, p. 302,

48-8-270. Short title.

This article shall be known and may be cited as the “Georgia Tourism Development Act.” (Code 1981, § 48-8-270, enacted by Ga. L. 2011, p. 302, § 2/HB 234.)

48-8-271. Definitions.

As used in this article, the term:

(1) “Agreement” means an agreement for a tourism attraction project between the Department of Community Affairs and an approved company pursuant to Code Section 48-8-275.

(2) “Annual sales and use tax” means those state and local sales and use taxes generated by sales to the general public at the approved tourism attraction during the calendar year immediately preceding the date of filing the sales and use tax refund claim.

(3) “Approved company” means the entity that has submitted an application to undertake a tourism attraction project, which has been approved pursuant to Code Section 48-8-274. For each tourism attraction project, only one company may be approved under this article.

(4) “Approved costs” means:

(A) For new tourism attractions:

(i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a new tourism attraction project;

(ii) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(iii) All costs for construction materials and equipment installed at the new tourism attraction project;

(iv) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a new

tourism attraction project which is not paid by the vendor, supplier, deliveryman, or contractor or otherwise provided;

(v) All costs of architectural and engineering services, including, but not limited to, estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a new tourism attraction project;

(vi) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a new tourism attraction project;

(vii) All costs required for the installation of utilities, including, but not limited to, water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions if paid for by the approved company; and

(viii) All other costs comparable with those described in this subparagraph; or

(B) For existing tourism attractions, any approved costs otherwise specified in subparagraph (A) of this paragraph; provided, however, that such costs are limited to the expansion only of an existing tourism attraction and not the renovation of an existing tourism attraction.

(5) "Approved tourism attraction" means a project that was approved pursuant to Code Section 48-8-274 and that has since opened to the public and become operational as a tourism attraction.

(6) "Expansion" means the addition of equipment, facilities, or real estate to an existing tourism attraction for the purpose of increasing its size, scope, or visitor capacity.

(7) "Incremental sales and use tax" means state and local sales and use taxes generated by sales to the general public at the approved tourism attraction from the date on which construction of the expansion project is completed through the end of the calendar year immediately preceding the date of filing the incremental sales and use tax refund claim, less the state and local sales and use taxes that were generated by sales to the general public at the approved tourism attraction during the 12 month period immediately preceding the commencement of construction of the expansion project.

(8) "Incremental sales and use tax refund" means the amount equal to the lesser of the incremental sales and use tax or 2.5 percent of the total of all approved costs incurred at any time prior to January

1 of the year during which the claim for the incremental sales and use tax refund is filed.

(9) “Local sales and use tax” means any sales and use tax, excluding the sales tax for educational purposes levied pursuant to Part 2 of Article 3 of this chapter and Article VIII, Section VI, Paragraph IV of the Constitution, that is levied and imposed in an area consisting of less than the entire state, however authorized.

(10) “Renovation” means the restoration, rebuilding, redesign, repair, or replacement of worn elements so that the functionality, quality, or attractiveness of buildings or structures is equivalent to a former state.

(11) “Sales and use tax refund” means the amount equal to the lesser of the annual sales and use tax or 2.5 percent of the total of all approved costs incurred at any time prior to January 1 of the year during which the claim for the sales and use tax refund is filed.

(12) “Tourism attraction” means a cultural or historical site; a recreation or entertainment facility; a convention hotel and conference center; an automobile race track, including, but not limited to, Atlanta Motor Speedway, with other tourism amenities; a golf course facility with other tourism amenities; marinas and water parks with lodging and restaurant facilities designed to attract tourists to the State of Georgia; or a Georgia crafts and products center. A tourism attraction shall not be primarily devoted to the retail sale of goods, shopping centers, restaurants, or movie theaters.

(13) “Tourism attraction project” or “project” includes the real estate acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of 30 years, construction, and equipping of a tourism attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including, but not limited to, surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions if paid for by the approved company. Such term shall not include the renovation of an existing tourism attraction. (Code 1981, § 48-8-271, enacted by Ga. L. 2011, p. 302, § 2/HB 234; Ga. L. 2013, p. 243, § 7/HB 318.)

The 2013 amendment, effective April 29, 2013, substituted the present provisions of paragraph (1) for the former provisions, which read: “‘Agreement’ means a tourism attraction agreement for a tourism attraction project entered into, pursuant to Code Section 48-8-275, on behalf of

the Department of Community Affairs and an approved company.”; added paragraphs (2), (5), (6), and (8) through (11); redesignated former paragraph (2) as present paragraph (3); rewrote paragraph (3); redesignated former paragraph (3) as present paragraph (4); added commas fol-

lowing “including” and “limited to” in divisions (4)(A)(v) and (4)(A)(vii) and in the first sentence of paragraph (13); redesignated former paragraph (4) as present paragraph (7); substituted the present provisions of paragraph (7) for the former provisions, which read: “Incremental sales and use tax’ means those state and local sales and use taxes generated by the tourism attraction project above the amount of such sales and use taxes generated by the previous use of the property on which such project is located except as otherwise provided in Code Section 48-8-278.”; redesignated former paragraph (5) as present paragraph (12); and, in paragraph (12), inserted “, including,

but not limited to, Atlanta Motor Speedway,” in the first sentence, in the second sentence, substituted “be primarily” for “include the following: (A) Facilities that are primarily”, and substituted a period for “; or” at the end; deleted the ending subparagraph (12)(B), which read: “Recreational facilities that do not serve as likely destinations where individuals who are not residents of this state would remain overnight in commercial lodging at the tourism attraction.”; redesignated former paragraph (6) as present paragraph (13); and, in paragraph (13), in the first sentence, substituted “includes” for “means” near the beginning.

48-8-272. Purpose of article; legislative findings.

The General Assembly finds and declares that the general welfare and material well-being of the citizens of this state depend in large measure upon the development of tourism in the state; that it is in the best interest of this state to induce the creation of tourism attractions or expansion of existing tourism attractions within this state in order to advance the public purposes of relieving unemployment by preserving and creating jobs that would not exist if not for the sales and use tax refund offered by the State of Georgia to approved companies and preserving and creating sources of tax revenues for the support of public services provided by the state; that the purposes to be accomplished under the provisions of this article are proper governmental and public purposes for which public moneys may be expended; and that the inducement of the creation of tourism attraction projects is of paramount importance to the economy of the state, mandating that the provisions of this article are to be liberally construed and applied in order to advance public purposes. (Code 1981, § 48-8-272, enacted by Ga. L. 2011, p. 302, § 2/HB 234.)

48-8-273. Tourism attractions agreements; execution; 10-year term; sales and use tax refund; administrative regulations.

(a) In the discretion of the commissioner of economic development and the commissioner of community affairs, in consideration of the execution of the agreement and subject to the approved company’s compliance with the terms of the agreement, an approved company shall be granted a sales and use tax refund for new projects or an incremental sales and use tax refund for expansions of existing tourism attractions.

(b) The approved company shall have no obligation to refund or otherwise return any amount of this sales and use tax refund to the persons from whom the sales and use tax was collected.

(c) The term of the agreement granting a refund under this article shall be ten years, commencing on the date the tourism attraction opens for business and begins to collect sales and use taxes or, for an expansion, the date construction is complete.

(d) For each calendar year or partial calendar year occurring during the term of the agreement, an approved company shall file with the Department of Revenue a claim for a refund under this article by March 31 of the following year.

(e) The Department of Revenue, in consultation with the Department of Community Affairs and other appropriate state agencies, shall promulgate administrative regulations and require the filing of a refund form designed by the Department of Revenue to reflect the intent of this article.

(f) No sales and use tax refund shall be granted to an approved company that is during a tax year simultaneously receiving any other state tax incentive associated with any one tourism attraction project.

(g) Any sales and use tax refund shall be first applied to any outstanding tax obligation of the approved company that is due and payable to the state.

(h) By resolution and at the discretion of the county and city, if any, where the tourism attraction project is to be located, the local sales and use tax may be refunded under the same terms and conditions as any refund of state sales and use taxes.

(i) Refunds under this article shall be made without interest. (Code 1981, § 48-8-273, enacted by Ga. L. 2011, p. 302, § 2/HB 234; Ga. L. 2013, p. 243, § 8/HB 318.)

The 2013 amendment, effective April 29, 2013, rewrote this Code section.

48-8-274. Standards for filing tourism attraction project applications; analysis of projects by independent consultants; conditions of eligibility and approval.

(a) The commissioner of community affairs, in consultation with other appropriate state agencies, shall establish standards for the filing of an application for tourism attraction projects by the promulgation of administrative regulations.

(b) In addition to any standards set forth pursuant to subsection (a) of this Code section, an application for a tourism attraction project filed with the Department of Community Affairs shall include:

(1) Marketing plans for the tourism attraction that target individuals who are not residents of this state;

(2) A description and location of the tourism attraction project;

(3) Capital and other specific expenditures for the tourism attraction project and the anticipated sources of funding for such project;

(4) The anticipated employment and wages to be paid at the tourism attraction;

(5) Business plans that indicate the average number of days in a year in which the tourism attraction will be in operation and open to the public;

(6) The anticipated revenues to be generated by the tourism attraction; and

(7) Resolutions from the governing authority of the county or the city, if any, in which the tourism attraction will be located endorsing the tourism attraction project and, where applicable, including appropriate affirmative clauses regarding permitting, land use, local incentives, and the provision of local public infrastructure.

(c) Following the filing of the application, the Department of Community Affairs shall submit the application to an independent consultant who shall perform an in depth analysis of the proposed project. All costs associated with such application and analysis shall be paid for by the approved company.

(d) The commissioner of economic development and the commissioner of community affairs may grant approval to the tourism attraction project if the project shall:

(1) Have approved costs in excess of \$1 million and such project is to be a tourism attraction;

(2) Have a significant and positive economic impact on the state considering, among other factors, the extent to which the tourism attraction project will compete directly with tourism attractions in this state;

(3) Produce sufficient revenues and public demand to be operating and open to the public for a minimum of 100 days per year, including the first year of operation;

(4) Not adversely affect existing employment in this state; and

(5) For each year following the third year of operation, attract a minimum of 25 percent of its visitors from nonresidents of this state.

(Code 1981, § 48-8-274, enacted by Ga. L. 2011, p. 302, § 2/HB 234; Ga. L. 2013, p. 243, § 9/HB 318.)

The 2013 amendment, effective April 29, 2013, deleted “the Governor and” following “consultation with” in subsection (a); in subsection (b), substituted “In addition to any standards set forth pursuant to subsection (a) of this Code section, an” for “An” at the beginning, and deleted “, but not be limited to” at the end; deleted “project” following “attraction” throughout subsection (b); substituted “specific” for “anticipated” in paragraph (b)(3); in paragraph (b)(5), substituted “that indicate” for “which indicate” and deleted “and” at the end; added “; and” at the end of paragraph (b)(6); added paragraph (b)(7); inserted “application and” in the second sentence of subsection (c); substituted the

present provisions of the introductory paragraph of subsection (d) for the former provisions, which read: “The Governor may, in the Governor’s sole discretion, grant approval to the tourism attraction project if the project shall:”; deleted “and the amount by which increased state local tax revenues from the tourism attraction project will exceed the refund to be given to the approved company” following “this state” at the end of paragraph (d)(2); substituted “this state; and” for “the state;” in paragraph (d)(4); substituted a period for “; and” at the end of paragraph (d)(5); and deleted former paragraph (d)(6), which read: “Meet such other criteria as deemed appropriate by the Governor.”

48-8-275. Authority of Department of Community Affairs to enter into agreements with approved companies; required terms and provisions of agreements.

Following approval of a project, the Department of Community Affairs shall enter into an agreement with any approved company. The agreement may include as a partner any local development authority. The terms and provisions of each agreement shall include, but not be limited to:

- (1) The projected amount of approved costs;
- (2) A date certain by which the approved company shall have completed the tourism attraction project and begun operations. Upon request from any approved company that has received final approval, the Department of Community Affairs shall grant an extension or change, which in no event shall exceed 18 months from the date of final approval, to the completion date as specified in the agreement with an approved company; and
- (3) A statement specifying the term of the agreement in accordance with subsection (c) of Code Section 48-8-273. (Code 1981, § 48-8-275, enacted by Ga. L. 2011, p. 302, § 2/HB 234; Ga. L. 2013, p. 243, § 10/HB 318.)

The 2013 amendment, effective April 29, 2013, substituted the present provisions of the introductory paragraph for the former provisions, which read: “Following approval by the Governor, the Department of Community Affairs shall en-

ter into an agreement with any approved company which may also include as a partner any local development authority, and the terms and provisions of each agreement shall include, but not be limited to:”; and deleted “, provided that any

increase in approved costs incurred by the approved company and agreed to by the Department of Community Affairs shall apply retroactively for purposes of calculating the carry forward for unused sales

and use tax refunds as set forth in subsection (e) of Code Section 48-8-273 for tax years commencing on or after July 1, 2011" following "approved costs" in paragraph (1).

48-8-276. Compliance subject to review by Department of Community Affairs; failure to abide by terms of agreement.

(a) Compliance with the agreement is subject to review by the Department of Community Affairs.

(b) In the event an approved company fails to abide by the terms of the agreement, then such agreement shall be void and all sales and use tax proceeds that were refunded shall become immediately due and payable back to the state. (Code 1981, § 48-8-276, enacted by Ga. L. 2011, p. 302, § 2/HB 234; Ga. L. 2013, p. 243, § 11/HB 318.)

The 2013 amendment, effective April 29, 2013, added subsection (a); designated the existing provisions as subsection (b); and, in subsection (b), substituted "proceeds that" for "proceeds which", and de-

leted "and to the governing authority of any county or municipality whose approval was required under paragraph (2) of Code Section 48-8-271" following "this state" at the end.

48-8-277. Transfer of rights, duties, and obligations to successor company.

An approved company may, in the discretion of the Governor, transfer its rights, duties, and obligations under the agreement to a successor company if the successor company meets the qualifications of an approved company and, upon such approval by the Governor, such successor approved company shall be authorized to receive the sales and use tax refunds for the remaining duration of the agreement if it abides by the terms of the agreement. (Code 1981, § 48-8-277, enacted by Ga. L. 2011, p. 302, § 2/HB 234.)

48-8-278. Article inapplicable to sales tax levied for educational purposes.

Repealed by Ga. L. 2013, p. 243, § 12/HB 318, effective April 29, 2013.

Editor's notes. — This Code section was based on Code 1981, § 48-8-278, enacted by Ga. L. 2011, p. 302, § 2/HB 234.

CHAPTER 9

MOTOR FUEL AND ROAD TAXES

Article 1

Motor Fuel Tax

Sec.		Sec.	
48-9-1.	Short title.	48-9-10.	Refunds of motor fuel taxes, in general; application for refund permit; contents; refunds to persons using gasoline for agricultural purposes; amount; retailers; separate claims; amount; interest.
48-9-2.	Definitions.	48-9-10.1.	Refunds of sales and use taxes to credit card issuers.
48-9-3.	Levy of excise tax; rate; taxation of motor fuels not commonly sold or measured by gallon; rate; prohibition of tax on motor fuel by political subdivisions; exception; exempted sales.	48-9-11.	Falsely swearing on application for refund of gasoline tax under Code Section 48-9-10; penalty.
48-9-4.	Requirement of distributor's license; validity and nonassignability; application; procedure; contents; filing fee; bond; amount; conditions; release and discharge of surety.	48-9-12.	Powers of the commissioner; notice of cancellation of license; retention of bonds; public inspection of records; assessment based on commissioner's estimate; agreements for time extension; list of licensed distributors.
48-9-5.	Licensing as distributors of fuel oils, compressed petroleum gas, or special fuel persons having both highway and nonhighway use of such fuel and resellers; purchases of such fuel by licensees exempt.	48-9-13.	Assessments of deficiencies; time limits; timely return; false or fraudulent return; no return; filing of statement by sheriff, receiver, or other officer upon sale of distributor's property; contents.
48-9-6.	Licensing of sellers and consumers of aviation gasoline as aviation gasoline dealers; application; contents; filing fee; validity and nonassignability of license.	48-9-14.	Second motor fuel tax; rate; exemptions; applicability of Article 1 of Chapter 8 of this title.
48-9-7.	Discontinuance, sale, or transfer of distributor's operations; notice to commissioner; time; contents; payment of taxes concurrent with discontinuance, sale, or transfer; effect of failure to give notice.	48-9-15.	Officers required to assist in enforcing article; powers.
48-9-8.	Tax reports from distributors; quarterly or annual; contents; payment; time; business records of distributors, resellers, and retailers; inspection; dyed fuel oil notices.	48-9-16.	Penalties and interest; untimely return; failure to pay; false or fraudulent returns; failure to file returns; dyed fuel oil violations.
48-9-9.	Reports of motor fuel deliveries; persons required to report; procedure; restrictions on delivery; reports of unlicensed purchasers.	48-9-17.	Violations of article; penalties.
		48-9-18.	Operation without distributor's license; assessment of penalty in lieu of taxes.
		48-9-19.	Cooperative agreements with other states.
		48-9-20.	Temporary exemption of motor fuels from state sales and use tax, excise tax, and second motor fuel tax [Repealed].

Article 2

Sec.

Road Tax on Motor Carriers

Sec.

- 48-9-30. Definitions.
- 48-9-31. Road tax on motor carriers; rate; basis of calculation; additional tax.
- 48-9-32. Payment of road tax; time; calculation on amount of motor fuel used in state; formula.
- 48-9-33. Reports of motor carriers; time; exemption.
- 48-9-34. Joint reports by passenger motor carriers; basis of calculation of taxes due; liability; contents of reports; credits and refunds; required inclusion of certain motor carriers.
- 48-9-35. Credit against road tax for payment of motor fuel tax; evidence of payments; subsequent application of credit exceeding amount of road tax; limit.
- 48-9-36. Refunds to motor carriers; minimum credit refundable; applications; procedure; bond; audit of applicant's records; procedure for issuance of refunds; interest.
- 48-9-37. Lessee and lessor of motor vehicles as motor carriers; determination of status; primary liability; effect of failure to discharge liability.
- 48-9-38. Requirement of motor vehicle registration card and identifi-

- 48-9-39. Violation of Code Section 48-9-38; penalty.
- 48-9-40. Keeping and preservation of records; inspection; estimate of amount of road tax due; prima-facie evidence; burden of proof; agreements with certain jurisdictions for cooperative audits.
- 48-9-41. Assessment of deficiencies; time limits; timely report; false or fraudulent report; no report; procedures for collection.
- 48-9-42. Secretary of State as agent of nonresident motor carriers for service of process or notice.
- 48-9-43. Assistance by Department of Public Safety in administration and enforcement of article; powers.
- 48-9-44. Powers of revenue agents in enforcement of article.
- 48-9-45. Penalties; violation of registration provisions; untimely reports; failure to pay; interest; other punitive measures.
- 48-9-46. Making false statement for purpose of obtaining credit, refund, or reduction of liability for tax imposed by article; willful failure to file report; penalty.

Cross references. — Use of motor fuel taxes for public road purposes, Ga. Const. 1983, Art. III, Sec. IX, Para. VI. Federal funds for public roads, and as to State Public Transportation Fund, T. 32, C. 5. Licensing of self-service motor fuel dispensing pumps by counties and municipalities, § 36-60-1. Examinations by state auditor of books, records, and accounts of persons required to pay occupational tax as distributors of motor fuels, § 50-6-5.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the

State of Georgia, Department of Revenue, Motor Fuel Tax and Road Taxes, Chapter 560-9-1.

Rules and regulations under the "Motor Fuel Tax Law" and the "Motor Carrier Fuel Tax Law," Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Motor Fuel Tax and Road Taxes, Chapter 560-9-2.

Forms used in the administration of the "Motor Fuel Tax Law" and the "Motor Carrier Fuel Tax Law," Official Compilation of the Rules and Regulations of the

State of Georgia, Department of Revenue, Motor Fuel Tax and Road Taxes, Chapter 560-9-3.

Powers and procedures for enforcement

of fuel tax and license tag laws, Official Compilation of the Rules and Regulations of the State of Georgia, State Department of Transportation, Sec. 672-4-.05.

ARTICLE 1

MOTOR FUEL TAX

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 92-14, prior to amendment by Ga. L. 1978, p. 186, § 1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Nature of tax. — Motor fuel tax laws, found in former Code 1933, Ch. 92-14 and Ga. L. 1968, p. 360 showed that the motor fuel taxes were of the nature of a road use tax. This is true because the funds collected must be used to construct and maintain the highways. 1963-65 Op. Att'y Gen. p. 92 (decided under former Code 1933, Ch. 92-14).

Construction of "use". — Word "use" as applied to motor fuel and as employed in former Code 1933, Ch. 92-14 meant to consume by combustion in a motor or for cleaning purposes or other uses that either consume it or at least render it unsuitable for future use as fuel for a motor. The word "use" as applied to motor fuel does not embrace storage and withdrawal. *Thompson v. Eastern Air Lines*, 200 Ga. 216, 39 S.E.2d 225 (1946) (decided under former Code 1933, Ch. 92-14).

Any transfer of possession made by a distributor to a dealer in the course of distributing motor fuel was a taxable event under former Code 1933, Ch. 92-14. 1971 Op. Att'y Gen. No. 71-134 (decided under former Code 1933, Ch. 92-14).

County health department was not exempt from payment of taxes on gasoline imposed by former Code 1933, Ch. 92-14. 1969 Op. Att'y Gen. No. 69-513 (decided under former Code 1933, Ch. 92-14).

Representative from a foreign country was not exempt from former Code 1933, Ch. 92-14 or Ga. L. 1951, p. 360. 1962 Op. Att'y Gen. p. 514 (decided under former Code 1933, Ch. 92-14).

Most favored nation clause of treaty with Belgium exempts Belgian officials from motor fuel taxes. — Exemption of officials does not extend to consular employees, and the exemption would not apply to the officers in the absence of a treaty. 1970 Op. Att'y Gen. No. U70-233 (decided under former Code 1933, Ch. 92-14).

RESEARCH REFERENCES

ALR. — State or political subdivision as subject to license or sale tax, 60 ALR 878; 67 ALR 1310; 159 ALR 365.

Constitutionality and construction of gasoline inspection and tax statutes, 84 ALR 839; 111 ALR 185.

Constitutionality of retroactive statute

imposing excise, license, or privilege tax, 146 ALR 1011.

Deductibility of other taxes or fees in computing excise or license taxes, 148 ALR 263; 174 ALR 1263.

Municipality as subject to state license or excise taxes, 159 ALR 365.

48-9-1. Short title.

This article shall be known and may be cited as the "Motor Fuel Tax Law." (Code 1933, § 92-1401, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5001, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 102.)

JUDICIAL DECISIONS

Cited in *Tuggle v. IRS*, 30 Bankr. 718 (Bankr. N.D. Ga. 1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 524 et seq.

48-9-2. Definitions.

As used in this article, the term:

(.1) "Agricultural field use" means the use of motor fuel of a type other than gasoline by vehicles licensed under paragraph (.1) of Code Section 40-2-150. Such term shall include the incidental movement over a highway as well as all off-road operations.

(1) "Aviation gasoline" means gasoline that is designed and sold for use solely for aviation purposes in aircraft engines.

(2) "Aviation gasoline dealer" means any person who sells or consumes aviation gasoline for aviation purposes only.

(3) "Compressed petroleum gas" means all liquid petroleum products composed of propane, propylene, butanes, butylenes, or any mixture thereof as determined by test method ASTM D-216370, Natural Gas Processors Association Liquefied Petroleum Specifications, 1970 revision.

(4) "Consumer distributor" means any person who has both highway and nonhighway use of motor fuel of a type other than gasoline and who elects to become licensed as a distributor to obtain the exemption allowed by this article.

(5) "Distributor" means every person other than the United States or any of its agencies who:

(A) Produces, refines, prepares, distills, manufactures, blends, or compounds motor fuel in this state;

(B) Makes the first sale in this state of any motor fuel imported into this state after the motor fuel has been received in this state;

(C) Consumes or uses in this state any motor fuel imported into this state before the motor fuel has been received by any other person in this state;

(D) Purchases motor fuel for export from this state;

(E) Consumes or uses motor fuel of a type other than gasoline for both highway and nonhighway use and who elects to become licensed as a distributor to obtain the exemption allowed by this article;

(F) Sells motor fuel of a type other than gasoline to consumers who have no highway use of such fuel and who elects to become licensed as a distributor to obtain the exemptions allowed by this article; or

(G) Imports motor fuel into this state for production, refining, preparation, distilling, manufacturing, blending, compounding, consumption, or use within this state.

(5.1) "Dyed fuel oils" means any fuel oil dyed pursuant to regulations issued by either the United States Environmental Protection Agency or the Internal Revenue Service.

(5.2) "Export and import" means:

(A) When motor fuels are sold for export and delivered across the boundaries of this state by or for the seller, such action is presumed to be an export from the place of origin and an import into the destination state or country by the seller; and

(B) When motor fuels are purchased for export and transported across the boundaries of this state by or for the purchaser, such action is presumed to be an export from the place of origin and an import into the destination state or country by the purchaser.

(6) "Fuel oils" means all liquid petroleum products including, but not limited to, kerosene, but does not mean gasoline, compressed petroleum gas, or special fuel.

(7) "Gasoline" means all products commonly or commercially known or sold as gasoline.

(8) "Highway use" means:

(A) The consumption or use of motor fuel other than gasoline in or upon a motor vehicle which is operated on the public highways;

(B) The placing of motor fuel other than gasoline in the running tank or power cells of a motor vehicle designed for use and used on the public highways; or

(C) The use of motor fuel other than gasoline in the construction, reconstruction, maintenance, or repair of public highways.

(8.1) "Loading rack" means that part of a terminal facility by which motor fuels are physically removed from the terminal facility into transport tank trucks, marine vessels, or rail cars.

(9) "Motor fuel" means any source of energy that can be used for propulsion of motor vehicles on the public highways including, but not limited to:

- (A) Gasoline;
- (B) Fuel oils;
- (C) Compressed petroleum gas; and
- (D) Special fuel.

(10) "Motor vehicle" means:

(A) Every self-propelled vehicle designed for operation or required to be licensed for operation upon the public highways; and

(B) Any other machine or mechanical contrivance using motor fuel to the extent that the machine or contrivance is operated upon the public highways.

(11) "Public highway" means every way or place of whatever nature generally open to the use of the public as a matter of right for the purpose of vehicular travel even though such way or place may never have been so open or may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.

(12) "Purchase" means any acquisition of ownership.

(13) "Received," in addition to its ordinary meaning, means:

(A) Motor fuel produced, refined, prepared, distilled, manufactured, blended, or compounded within this state; or

(B) Motor fuel imported into the territorial boundaries of this state which is held for sale or use or is stored in any receptacle which has withdrawal facilities for sale or use in this state.

(14) "Sale" means any exchange, gift, consignment, bailment, or any other accounted for or unaccounted for disposition.

(15) "Special fuel" means all sources of energy other than gasoline, fuel oils, or compressed petroleum gas.

(15.1) "Terminal" means a motor fuel storage and distribution facility that is supplied by pipeline or marine vessel and from which motor fuels may be removed by either a loading rack or user pipeline. However, the term does not include any facility at which petroleum blend stocks and additives are used to manufacture products other than motor fuel and from which no motor fuel is removed.

(16) “Transport tank truck” means any tank truck used to transport motor fuel in bulk quantities. (Code 1933, § 92-1402, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5002, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 102; Ga. L. 1990, p. 799, § 1; Ga. L. 1993, p. 1502, §§ 1-3; Ga. L. 1995, p. 359, § 1; Ga. L. 1998, p. 1580, § 1; Ga. L. 2002, p. 1074, § 5.)

Editor’s notes. — Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides that: “This Act shall not abate any prosecution, punishment, penalty, ad-

ministrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act.”

JUDICIAL DECISIONS

Automobile manufacturer could not be exporter of motor fuel since the sale of the manufacturer’s automobiles — and of the motor fuel within the automobiles — took place within the state. *Ford Motor Co. v. Collins*, 257 Ga. 310, 357 S.E.2d 567 (1987).

Clearing and grading for road construction is highway use. — Fuel used

by machinery engaged in the clearing and grading processes necessary for the construction of a public highway within a right of way is motor fuel used for the purpose of construction of public highways within the meaning of “highway use.” *Green Constr. of Ind., Inc. v. State*, 123 Ga. App. 422, 181 S.E.2d 389 (1971).

OPINIONS OF THE ATTORNEY GENERAL

So-called “economy” gasolines are taxed in the same manner as other grades of gasoline and the fact that they are sold at a lower rate to a consumer would not affect the eligibility for refund of the tax when other refund conditions are met. 1962 Op. Att’y Gen. p. 518.

Transfer from bulk tank to retail tank by one operating both is not a sale. — Transfer of gasoline from a bulk plant tank to a retail tank, when the distributor is operating both businesses, is not a disposition within the definition of “sale” and, hence, the tax accrues when

the gasoline is sold from the distributor’s retail tank to a purchaser. 1960-61 Op. Att’y Gen. p. 536.

Meaning of “or any other accounted for or unaccounted for disposition” in definition of “sale”. — When the General Assembly added the phrase “or any other accounted for or unaccounted for disposition” the legislature meant to include in the definition of the taxable event any delivery made by the distributor to a dealer in the course of distributing gasoline. 1960-61 Op. Att’y Gen. p. 533.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Highways, §§ 1, 2. 53 C.J.S., Licenses, §§ 5, 55, 103. 60 C.J.S., Motor Vehicles, §§ 1 et seq., 59.

ALR. — What constitutes a sale “at retail” within federal retailers’ excise tax

statute (26 USC (IRC 1954) chap 31), 93 ALR2d 1120.

What constitutes manufacturing and who is a manufacturer under tax laws, 17 ALR3d 7.

48-9-3. Levy of excise tax; rate; taxation of motor fuels not commonly sold or measured by gallon; rate; prohibition of tax on motor fuel by political subdivisions; exception; exempted sales.

(a)(1) An excise tax is imposed at the rate of 7 1/2¢ per gallon on distributors who sell or use motor fuel within this state. It is the intention of the General Assembly that the legal incidence of the tax be imposed upon the distributor.

(2) In the event any motor fuels which are not commonly sold or measured by the gallon are used in any motor vehicles on the public highways of this state, the commissioner may assess, levy, and collect a tax upon such fuels, under such regulations as the commissioner may promulgate, in accordance with and measured by the nearest power potential equivalent to that of one gallon of regular grade gasoline. Any determination by the commissioner of the power potential equivalent of such motor fuels shall be prima-facie correct. Upon each such quantity of such fuels used upon the public highways of this state, a tax at the same rate per gallon imposed on motor fuel under paragraph (1) of this subsection shall be assessed and collected.

(3) No county, municipality, or other political subdivision of this state shall levy any fee, license, or other excise tax on a gallonage basis upon the sale, purchase, storage, receipt, distribution, use, consumption, or other disposition of motor fuel. Nothing contained in this article shall be construed to prevent a county, municipality, or other political subdivision of this state from levying license fees or taxes upon any business selling motor fuel.

(4)(A) For purposes of this subsection, and notwithstanding the provisions of paragraph (2) of this subsection and any provision contained in the National Bureau of Standards Handbook or any other national standard that may be adopted by law or regulation, the gallon equivalent of compressed natural gas shall be not less than 110,000 British thermal units and the gallon equivalent of liquefied natural gas shall not be less than 6.06 pounds.

(B) As used in this paragraph, the term:

(i) "Compressed natural gas" means a mixture of hydrocarbon gases and vapors, consisting principally of methane in gaseous form, that has been compressed for use as a motor fuel.

(ii) "Liquefied natural gas" means methane or natural gas in the form of a cryogenic or refrigerated liquid for use as a motor fuel.

(b) No tax is imposed by this article upon or with respect to the following sales by duly licensed distributors:

- (1) Bulk sales to a duly licensed distributor;
- (2) Sales of motor fuel for export from this state when exempted by any provisions of the Constitutions of the United States or this state;
- (3) Sales of motor fuel to a licensed distributor for export from this state;
- (4) Sales of motor fuel to the United States for the exclusive use of the United States when the motor fuel is purchased and paid for by the United States;
- (5) Sales of aviation gasoline to a duly licensed aviation gasoline dealer, except for 1¢ per gallon of the tax imposed by paragraph (1) of subsection (a) of this Code section and all of the tax imposed by Code Section 48-9-14;
- (6) Bulk sales of compressed petroleum gas or special fuel to a duly licensed consumer distributor;
- (7)(A) Sales of compressed petroleum gas or special fuel to a consumer who has no highway use of the fuel at the time of the sale and does not resell the fuel. Consumers of compressed petroleum gas or special fuel who have both highway and nonhighway use of the fuel and resellers of such fuel must be licensed as distributors in order for sales of the fuel to be tax exempt. Each type of motor fuel is to be considered separately under this exemption.

(B)(i) In instances where a sale of compressed petroleum gas has been made to an ultimate consumer who has both highway and nonhighway use of that type of motor fuel and no tax has been paid by the distributor on the sale, the consumer shall become licensed as a consumer distributor of that type of motor fuel. After the consumer is licensed as a consumer distributor and if it is demonstrated to the satisfaction of the commissioner that the motor fuel purchased prior to the licensee's becoming licensed as a consumer distributor was used for nonhighway purposes, such sales shall be exempt from the tax imposed by this article; provided, however, that, if at the time of demonstration the ultimate consumer does not have both highway and nonhighway use of such fuel but it can be demonstrated by the distributor to the satisfaction of the commissioner that the motor fuel was used for nonhighway purposes, the sales shall be exempt from the tax imposed by this article; and

(ii)(I) Any special fuel sold by a distributor to a purchaser who has a storage receptacle which has a connection to a with-

drawal outlet that may be used for highway use, as defined in paragraph (8) of Code Section 48-9-2, is not exempt from the motor fuel and road taxes imposed by this article unless: (1) the purchaser is at the time of sale a valid licensed distributor of that type of motor fuel, or (2) an exemption certificate has been obtained from the purchaser on forms furnished by the Department of Revenue showing that the purchaser has no highway use of such fuels and is not a reseller of such fuels. Each exemption certificate shall be valid for a period of not more than three years and shall be kept by the distributor as one of the records specified in Code Section 48-9-8. It shall be the responsibility of the purchaser to notify the distributor when the purchaser is no longer qualified for the nonhighway exemption. All applicable taxes must be charged the purchaser until the purchaser is granted a valid distributor's license for that type of motor fuel.

(II) Any such purchaser granted an exemption under subdivision (I) of this division who falsely claims the exemption or fails to rescind the purchaser's exemption certificate to the distributor in writing when he or she is no longer eligible for the exemption shall be deemed a distributor for purposes of taxation and is subject to all provisions of this article relating to distributors. This division in no way shall restrict the option of the purchaser to become licensed as a distributor. If the distributor sells special fuel to a purchaser who has a storage receptacle which has a connection to a withdrawal outlet that may be used for highway use, as defined in paragraph (8) of Code Section 48-9-2, and the purchaser is not a valid licensed distributor and has not executed a valid signed exemption certificate, the taxes imposed by this article are due from the distributor and not the purchaser on all sales of that type of fuel to that purchaser;

(8) Sales of fuel oils, compressed petroleum gas, or special fuel directly to an ultimate consumer to be used for heating purposes only. The delivery of fuel oils, compressed petroleum gas, or special fuel directly to an ultimate consumer to be used for heating purposes only shall be made directly into the storage receptacle of the heating unit of the consumer by the licensed distributor. To qualify for this exemption, sales must be delivered into storage receptacles that are not equipped with any secondary withdrawal outlets for the motor fuel;

(9) Sales of dyed fuel oils to a consumer for other than highway use as defined in paragraph (8) of Code Section 48-9-2;

(10)(A) During the period of July 1, 2012, through June 30, 2015, sales of motor fuel, as defined in paragraph (9) of Code Section

48-9-2, for public mass transit vehicles which are owned by public transportation systems which receive or are eligible to receive funds pursuant to 49 U.S.C. Sections 5307 and 5311 for which passenger fares are routinely charged and which vehicles are used exclusively for revenue generating purposes which motor fuel sales occur at bulk purchase facilities approved by the department.

(B) During the period of July 1, 2012, through June 30, 2015, sales of motor fuel, as defined in paragraph (9) of Code Section 48-9-2, for vehicles operated by a public campus transportation system, provided that such system has a policy which provides for free transfer of passengers from the public transportation system operated by the jurisdiction in which the campus is located; makes the general public aware of such free transfer policy; and receives no state or federal funding to assist in the operation of such public campus transportation system and which motor fuel sales occur at bulk purchase facilities approved by the department.

(C) For purposes of this paragraph, the term "vehicle" or "vehicles" means buses, vans, minibuses, or other vehicles which have the capacity to transport seven or more passengers; or

(11) For the period of time beginning July 1, 2013, and ending June 30, 2015, sales of motor fuel to public school systems in this state for the exclusive use of the school system in operating school buses when the motor fuel is purchased and paid for by the school system.

(c) Fuel oils, compressed petroleum gas, or special fuel used by a duly licensed distributor for nonhighway purposes is exempt from the tax imposed by this article.

(d) No export from this state shall be recognized as being exempt from tax under paragraphs (2) and (3) of subsection (b) of this Code section unless the exporter informs the seller and the terminal operator of the intention to export and causes to be set out the minimum information specified in subsection (e) of Code Section 48-9-17 on the bill of lading or equivalent documentation under which the motor fuel is transported. In the event that the motor fuel is delivered to any point other than that which is set out on the bill of lading or equivalent documentation, the legal incidence of the tax shall continue to be imposed exclusively upon the exporter who caused the export documentation to be issued and no exemption shall be recognized until suitable proof of exportation has been provided to the commissioner. (Code 1933, § 92-1403, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5003, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 102; Ga. L. 1979, p. 1274, §§ 1, 3; Ga. L. 1980, p. 10, § 30; Ga. L. 1985, p. 1644, § 1; Ga. L. 1986, p. 10, § 48; Ga. L. 1993, p. 811, § 2; Ga. L. 1993, p. 1502, § 4;

Ga. L. 1994, p. 569, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 359, § 2; Ga. L. 2004, p. 425, § 2; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 505, § 1/HB 384; Ga. L. 2006, p. 523, § 1/HB 1244; Ga. L. 2008, p. 889, § 2/HB 1035; Ga. L. 2010, p. 813, § 2/HB 1393; Ga. L. 2012, p. 1348, § 1/HB 743; Ga. L. 2013, p. 786, § 1/HB 211; Ga. L. 2013, p. 869, § 1/HB 371.)

The 2012 amendment, effective July 1, 2012, substituted “July 1 2012, through June 30, 2015” for “July 1, 2010, through June 30, 2012” in subparagraphs (b)(10)(A) and (b)(10)(B).

The 2013 amendments. — The first 2013 amendment, effective July 1, 2013, deleted “or” at the end of paragraph (b)(9); substituted “; or” for a period at the end of paragraph (b)(10); and added paragraph (b)(11). The second 2013 amendment, effective July 1, 2013, substituted the present provisions of paragraph (a)(4) for the former provisions, which read: “For purposes of this subsection, and notwithstanding the provisions of paragraph (2) of this subsection and any provision contained in the National Bureau of Standards Handbook or any other national standard that may be adopted by law or regulation, the gallon equivalent of compressed natural gas shall be not less than 110,000 British thermal units. As used in this paragraph, the term ‘compressed nat-

ural gas’ means a mixture of hydrocarbon gases and vapors, consisting principally of methane in gaseous form, that has been compressed for use as a motor fuel.”

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, “is exempt” was substituted for “are exempt” in subsection (c).

Pursuant to Code Section 28-9-5, in 1986, a hyphen was inserted in “prima facie” in the second sentence of paragraph (a)(2) and “ultimate” was substituted for “utlimate” in the second sentence of division (b)(7)(B)(i).

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U.L. Rev. 217 (2011).

JUDICIAL DECISIONS

Section is constitutional. Road Bldrs., Inc. v. Hawes, 228 Ga. 608, 187 S.E.2d 287 (1972).

Classification for taxation of distributors of motor fuels is not arbitrary, unreasonable, or unnatural because the classification seeks to place in the same class and tax under one head distributors of motor fuel engaged in business as an occupation and for profit, and a political subdivision of the state not engaged in business, which uses such fuels for a purely governmental purpose. Wright v. Fulton County, 169 Ga. 354, 150 S.E. 262 (1929).

Intent and purpose. — It is manifest from the terms of this section that the General Assembly did not intend to impose motor fuel tax on fuels if those fuels

were neither sold for use nor used in the propulsion of motor vehicles on the public highways. The scheme of former Code 1933, Ch. 92-14 afforded to the distributor, the dealer, and the ultimate consumer the means of ascertaining the taxability or nontaxability of such motor fuels, the means of reporting the sales and paying the tax, or claiming the exemption, and when the exemption is drawn in question, of proving the exemption. Undercoffer v. Standard Oil Co., 111 Ga. App. 592, 142 S.E.2d 298 (1965).

Consumer may personally acquire a distributor’s license. — This serves to release the dealer from responsibility for the payment of motor fuel taxes while at the same time assuring the consumer that the consumer need pay taxes only on that

portion of fuel relegated to highway uses. *Scott v. Blackmon*, 132 Ga. App. 578, 208 S.E.2d 589 (1974).

Tax assessments are made when one has the potential for highway use, that is, whether one owns or operates a vehicle capable of highway use at the time of the sale. *Scott v. Blackmon*, 132 Ga. App. 578, 208 S.E.2d 589 (1974).

Tax not part of retail sales price for sales and use tax purposes. — Tax imposed by this section is upon the incident of the sale to the consumer and should not be included as a part of the retail sales price for calculating the sales and use tax. *State v. Thoni Oil Magic Benzol Gas Stations, Inc.*, 121 Ga. App. 454, 174 S.E.2d 224, aff'd, 226 Ga. 883, 178 S.E.2d 173 (1970).

Municipal tax based on storage capacity violates section. — Under the provision prohibiting municipalities from the levy of any fee, license, privilege, or excise tax or taxes upon the sale, purchase, storage, receipt, distribution, use, consumption, or other disposition of motor fuel, but not proscribing the levying by municipalities of reasonable license fees

or taxes upon the business of selling motor fuel, a license and tax ordinance imposing graduated taxes on gasoline stations having storage capacities within various limits is void, since, although clothed in the language of merely imposing a tax on the gasoline storage capacity of filling stations, its necessary effect was to tax the storage of the fuel itself; and consequently to impose a prohibited additional tax on the commodity itself. *Southern Oil Stores, Inc. v. City of Macon*, 188 Ga. 544, 4 S.E.2d 243 (1939).

Exemption of instrumentalities of United States government. — Federal Land Bank and other corporations composing the Farm Credit Administration of Columbia are instrumentalities of the United States government, within the meaning of this section, and by the express terms of this section no tax is levied in respect to sale of gasoline made to them. An action for injunction brought by such corporations against the commissioner states a cause of action, and should not have been dismissed on demurrer (now motion to dismiss). *Federal Land Bank v. Forrester*, 192 Ga. 446, 15 S.E.2d 517 (1941).

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American National Red Cross was not liable for the second motor fuel tax on its purchases of motor fuel because it was a federal instrumentality for purposes of immunity from state taxation; and former Code 1933, § 92-1420 imposing the tax adopted the exemption of the original Motor Fuel Tax Act under former Code 1933, § 92-1403 for sales of motor fuel to the United States. 1980 Op. Att'y Gen. No. 80-28.

So-called "economy" gasolines are taxed in the same manner as other grades of gasoline and the fact that those gasolines are sold at a lower rate to the consumer would not affect the eligibility for refund of the tax when other refund conditions are met. 1962 Op. Att'y Gen. p. 518.

Sales by United States to private citizens nonexempt. — While this section exempts from taxation the sale of motor fuel to the United States when the fuel is purchased and paid for by the

United States, the statute does not cover any sales by the United States to private citizens of this gasoline or the use by private citizens of this gasoline after having been purchased from the United States government or any of the U.S. government's instrumentalities. 1945-47 Op. Att'y Gen. p. 576.

Exemption provided under certain conditions for the United States or its instrumentalities does not extend to this state. 1945-47 Op. Att'y Gen. p. 576.

No exemption for motor fuel purchased with funds appropriated by the federal government for use of the Georgia National Guard since the fuel is not paid for by the United States. 1963-65 Op. Att'y Gen. p. 92.

Municipalities are not exempt from the tax on motor fuel. 1950-51 Op. Att'y Gen. p. 188.

Municipal corporation is not exempt from payment of the motor fuel tax. 1945-47 Op. Att'y Gen. p. 583.

Proof by aviation gasoline distributors of refund claims. — Refunds may be made to the distributor when satisfactory proof submitted by the distributor that aviation gasoline for which refund is claimed was sold to the ultimate con-

sumer. Such refunds may be refused when the accounting records of the distributor are not maintained in such manner as will readily permit verification of claims for refund by the commissioner's field auditors. 1962 Op. Att'y Gen. p. 492.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 67 et seq., 157 et seq., 533 et seq.

C.J.S. — 53 C.J.S., Licenses, §§ 5, 56, 57.

ALR. — Municipal tax imposed upon or measured by sales of gasoline of one conducting business within city limits as payable in respect of sales or deliveries beyond city limits, 106 ALR 1332.

Validity of privilege tax as applied to contractor performing contract with federal government, 114 ALR 347.

Tax exemptions and the contract clause, 173 ALR 15.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in Constitution, 61 ALR2d 1031.

What constitutes a sale "at retail" within federal retailers' excise tax statute (26 USC (IRC 1954) chap 31), 93 ALR2d 1120.

48-9-4. Requirement of distributor's license; validity and nonassignability; application; procedure; contents; filing fee; bond; amount; conditions; release and discharge of surety.

(a) It is unlawful for any person to act as a distributor unless the person holds an uncanceled distributor's license issued by the commissioner. Any license issued under this article shall indicate the type of motor fuel the distributor is licensed to distribute. The license issued by the commissioner under this article is not assignable and is valid only for the distributor to whom issued. The license shall remain in force until canceled by the commissioner. Any distributor who holds a valid license on January 1, 1980, shall not be required to obtain a new license under this article.

(b)(1) To obtain a license, every distributor shall file with the commissioner an application under oath and in such form as required by the commissioner.

(2) The application shall contain, but not be limited to, the following information:

(A) The name of the legal entity;

(B) The trade name of the legal entity;

(C) The location or locations, with street address, of all principal office or business locations of the legal entity within and outside this state; and

(D) The name and address of the owner or owners of the legal entity or, in the case of a corporation, trust, or association, the principal officers of the corporation, trust, or association.

(3) Upon filing of the application, a filing fee of \$10.00 shall be paid to the commissioner.

(c)(1) Concurrent with the filing of an application for a license, a surety bond shall be filed with the commissioner:

(A) In an amount of three times the average monthly motor fuel taxes due during the preceding 12 months and in no case shall the bond be in an amount of less than \$1,000.00 or more than \$150,000.00;

(B) With a surety company approved by the commissioner;

(C) Upon which the distributor shall be the principal obligor and the state shall be the obligee; and

(D) Conditioned upon the timely filing of true reports and payments by the distributor to the commissioner of all motor fuel taxes together with all penalties and interest imposed by this article and upon faithful compliance with all provisions of this article.

(2) Every bond shall be continuous. Each year shall constitute a separate obligation in the amount of taxes, penalty, and interest imposed or levied by this state while the bond is in force.

(3) Any surety may be released and discharged from all liability to the state occurring on a bond filed as provided in this subsection after the expiration of 60 days from the date upon which the surety lodges with the commissioner a written request to be released and discharged. The request shall not relieve, release, or discharge a surety from any tax, penalty, or interest accrued before the expiration of the 60 day period.

(4) The commissioner shall promptly notify the distributor in writing of the surety request for release from the bond and unless the distributor files a new bond with an approved surety within the 60 day period the commissioner shall cancel the license of the distributor.

(5) In the event that the surety for the distributor has become unacceptable in the opinion of the commissioner, the commissioner may require the distributor to file a new bond with an acceptable surety in the same amount and for the same period of time. Upon failure by the distributor to comply within 30 days, the commissioner shall cancel the license of the distributor. If acceptable surety is

furnished, the commissioner shall cancel the bond that was unacceptable and substitute the new bond.

(6) In the discretion of the commissioner, in lieu of a bond executed by a surety, a distributor may furnish his bond not so executed if the distributor concurrently deposits and pledges with the commissioner direct obligations of the United States, bonds guaranteed by the United States, bonds of this state, bonds of any public authority created by the General Assembly, or bonds issued pursuant to Article 3 of Chapter 82 of Title 36, in an amount equal to three times the full amount of the bond or bonds otherwise required by this Code section.

(7) In lieu of a surety bond or a bond under paragraph (6) of this subsection, a distributor may, at the discretion of the commissioner, furnish an irrevocable letter of credit. Such letter of credit shall be:

(A) In an amount equal to three times the full amount of the surety bond or surety bonds otherwise required by this Code section;

(B) Issued by a financial institution approved by the commissioner; and

(C) Conditioned upon the timely filing of true reports and payments by the distributor to the commissioner of all motor fuel taxes together with all penalties and interest imposed by this article and upon faithful compliance with all provisions of this article. (Code 1933, § 92-1405, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5005, 91A-5006, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5004, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1980, p. 10, § 31; Ga. L. 1990, p. 799, § 2.)

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Licensing of state agencies as distributors. — State agency may be required to become licensed as a motor fuel

distributor when the agency makes taxable use of a portion of fuel purchased. 1960-61 Op. Att'y Gen. p. 534.

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, §§ 8 et seq., 56 et seq.

petitor from unlicensed or otherwise illegal acts or practices, 90 ALR2d 7.

ALR. — Right to enjoin business com-

48-9-5. Licensing as distributors of fuel oils, compressed petroleum gas, or special fuel persons having both highway and nonhighway use of such fuel and resellers; purchases of such fuel by licensees exempt.

(a) Any person who has both highway and nonhighway use of compressed petroleum gas or special fuel may elect to become licensed as a distributor of that type of motor fuel. The distributor shall be qualified to purchase motor fuel of that type exempt from the taxes imposed by this article only after becoming licensed; provided, however, that no license shall be required from a person whose only nonhighway use is of dyed fuel oils. The distributor shall be subject to this article.

(b) Any person who resells fuel oils, compressed petroleum gas, or special fuel may elect to become licensed as a distributor of that type of motor fuel. The distributor shall be qualified to purchase motor fuel of that type exempt from the taxes imposed by this article. The distributor shall be subject to this article. (Code 1933, § 92-1406, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5003, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5005, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1995, p. 359, § 3; Ga. L. 2004, p. 425, § 3.)

RESEARCH REFERENCES

ALR. — What constitutes manufacturing and who is a manufacturer under tax laws, 17 ALR3d 7.

48-9-6. Licensing of sellers and consumers of aviation gasoline as aviation gasoline dealers; application; contents; filing fee; validity and nonassignability of license.

(a) Sellers or consumers of aviation gasoline shall be eligible to become licensed as aviation gasoline dealers. To obtain an aviation gasoline dealer license, the person shall pay a \$10.00 fee to and shall file with the commissioner an application as prescribed by the commissioner.

(b) The application required by subsection (a) of this Code section shall include, but not be limited to, the following information:

- (1) Name of the legal entity;
- (2) Trade name of the legal entity;

(3) The location or locations, with street address, of all principal office or business locations of the legal entity within or outside this state; and

(4) The name and address of the owner or owners of the legal entity or, in the case of a corporation, trust, or association, the principal officers of the corporation, trust, or association.

(c) The license issued by the commissioner under this Code section is not assignable and is valid only for the person to whom the license is issued. The license shall remain in force until canceled by the commissioner. Any aviation gasoline dealer who holds a valid license on January 1, 1980, shall not be required to obtain a new license under this Code section. (Code 1933, § 92-1407, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5005, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5006, enacted by Ga. L. 1979, p. 5, § 102.)

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, §§ 8 et seq., 50, 52, 58, 59, 101.

48-9-7. Discontinuance, sale, or transfer of distributor's operations; notice to commissioner; time; contents; payment of taxes concurrent with discontinuance, sale, or transfer; effect of failure to give notice.

(a) When any distributor ceases his operations or has a change in legal entity, the distributor shall notify the commissioner in writing at least ten days prior to the discontinuance, sale, or transfer of the operations. The notice shall give the date of discontinuance, sale, or transfer and shall give the name of the entity acquiring the operations. All taxes, penalties, and interest due and payable under this article shall be paid concurrently with the discontinuance, sale, or transfer of the operations.

(b) Failure to give the notice required by this Code section shall make the purchaser or transferee liable to the state for all taxes, penalties, and interest due, but only to the extent of the value of the assets acquired from the distributor. (Code 1933, § 92-1408, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5016, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5007, enacted by Ga. L. 1979, p. 5, § 102.)

48-9-8. Tax reports from distributors; quarterly or annual; contents; payment; time; business records of distributors, resellers, and retailers; inspection; dyed fuel oil notices.

(a) For the purpose of determining the amount of tax imposed by paragraph (1) of subsection (a) of Code Section 48-9-3, each distributor shall file with the commissioner by the twentieth day of each calendar month a report for the preceding month's activities. By regulation, the

commissioner may permit distributors having a quarterly or annual tax not in excess of amounts set by the commissioner to file quarterly or annual reports.

(b) At the time of submitting the report required by subsection (a) of this Code section, the distributor shall pay to the commissioner the tax imposed by paragraph (1) of subsection (a) of Code Section 48-9-3 on all gasoline, fuel oils, compressed petroleum gas, special fuel, and aviation gasoline sold or used in this state during the preceding calendar month, less an allowance of 1 percent of the tax as compensation to cover losses and expenses incurred in reporting the tax to the state. The allowance shall not be deductible unless the report and payment of tax are made on or before the twentieth day of the month as required by this article.

(c)(1) Each distributor and each aviation gasoline dealer licensed by the commissioner shall keep such records as the commissioner shall require for the effective administration of this article and for the reporting and justification of the amount of tax liability. The records shall include, but are not limited to, all motor fuel received, sold, delivered, or used within this state and all motor fuel exported from this state for a period of three years. Invoices, bills of lading, and other papers shall be maintained in an auditable manner to support the reports filed with the commissioner. When an exemption from the taxes imposed by this article has been taken by the distributor, the records and papers of the distributor must account for the motor fuel and the exemption from the taxes imposed.

(2) All other persons receiving motor fuel in bulk quantities for sale, distribution, use, or consumption and not specifically covered by this article shall maintain and keep records of motor fuel received and all invoices, bills of lading, and other records required by the commissioner for a period of three years.

(3) Every person who sells motor fuel at retail shall make the sales through pumps equipped with meters or totalizers. Every person making sales must maintain for a period of three years records of gallons received and sold to account for all motor fuel.

(4) The commissioner or his authorized agents shall have the right during regular business hours to inspect the books and records of any distributor, aviation gasoline dealer, or any other person who receives, sells, uses, or consumes motor fuel. The commissioner or his agents may inspect the books and records of any person who the commissioner may believe has information that could be necessary to the enforcement of any revenue law of this state.

(5) Every person who sells or delivers dyed fuel oil shall put on the face of the delivery document or invoice, or both if both are used, a notice that the product is dyed and is not for highway use. The

commissioner may by regulation provide that any notice conforming to regulations promulgated by either the United States Environmental Protection Agency or Internal Revenue Service will be sufficient notice for purposes of this Code section. (Code 1933, § 92-1409, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5007, 91A-5013, 91A-5014, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5008, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1980, p. 10, §§ 32, 33; Ga. L. 1990, p. 799, § 3; Ga. L. 1995, p. 359, § 4; Ga. L. 2004, p. 425, § 4; Ga. L. 2005, p. 159, § 25/HB 488.)

Editor's notes. — Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

JUDICIAL DECISIONS

Cited in *Strickland v. Phillips Petro. Co.*, 248 Ga. 582, 284 S.E.2d 271 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 536, 537.

48-9-9. Reports of motor fuel deliveries; persons required to report; procedure; restrictions on delivery; reports of unlicensed purchasers.

(a)(1) A report of all deliveries of motor fuel shall be made to the commissioner by:

(A) Each of the following companies and carriers transporting motor fuel either in interstate or in intrastate commerce to points within this state:

- (i) Every railroad company;
- (ii) Every street, suburban, or interurban railroad company;
- (iii) Every pipeline company;
- (iv) Every water transportation company;
- (v) Every common or contract carrier; and
- (vi) Every operator of a terminal;

(B) Every person transporting motor fuel by whatever manner to a point in this state from any point outside this state; and

(C) Every person transporting motor fuel from a point in this state to a point outside this state.

(2) Each report required by this subsection shall be:

(A) Made under oath on forms prescribed by the commissioner; and

(B) Filed by the twentieth day of each calendar month to cover the preceding calendar month's activities.

(b) The commissioner shall assign a tank registration number to each person transporting motor fuel over the public highways or navigable waters of this state and shall furnish a separate tank identification card for each transport tank truck or vessel operated within this state. The registration number shall be displayed continuously and conspicuously on the truck, tank, or vessel operated by persons transporting motor fuel. The identification card issued for each such truck or vessel shall be available for inspection by the commissioner's agents and shall remain with the truck or vessel when transporting motor fuel on the public highways or navigable waters of this state. Tank identification cards are not transferable and are valid only for the transport tank truck or vessel for which issued.

(c) No person shall transport motor fuel in this state except in a transport tank truck or vessel which is visibly marked on each side and on the rear with the words "Motor Fuel," "Flammable," or other indication of the type of product being transported suitable to the commissioner or other regulatory agencies, together with the name and address of the owner of the transport tank truck or vessel and the tank registration number. This subsection shall not apply to vehicles or vessels transporting motor fuel contained in their running tanks and used solely for their propulsion or to vehicles or vessels transporting motor fuel of not more than five gallons for emergency purposes.

(d)(1) Every person transporting motor fuel over the public highways or navigable waters of this state shall have in such person's possession an invoice, bill of sale, or other document which identifies:

(A) The true name and address of the person from whom the motor fuel was received;

(B) The number of gallons originally received;

(C) The true name and address of every person who has received any part of the fuel;

(D) The number of gallons delivered to such persons; and

(E) The city or county and state of destination as represented to the transporter by the person who arranged the transportation.

(2) Failure to produce such invoice, bill of sale, or other document when demanded or failure of a document produced upon demand to

meet the requirements of this Code section shall be prima-facie evidence of a violation of this article.

(3) The transporter shall leave a copy of the invoice, bill of lading, or other documentation with each person who receives the fuel into bulk storage for resale.

(e) Delivery of motor fuel from a transport tank truck or vessel directly into the fuel tank of any motor vehicle in this state is prohibited except in cases of emergency.

(f) Every person purchasing or otherwise acquiring motor fuel in bulk quantities for sale, use, or other disposition in this state who is not required to be licensed as a distributor by this article may be required to file by the twentieth day of each calendar month a report on forms prescribed by the commissioner to account for all such motor fuel acquired during the preceding calendar month. Every operator of a terminal who receives motor fuel in bulk for storage shall include on a report to the commissioner the names of all persons who are storing fuel in the terminal and the quantity received, stored, and delivered during the month on behalf of each such account. The report shall specify what portion of the deliveries recorded for each account were within the terminal to others and what portion was removed from the terminal facility via the loading rack. The report shall identify the city or county and state of destination of the deliveries as reflected on the bills of lading issued by the terminal operator. (Code 1933, § 92-1410, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5010, 91A-5011, 91A-5012, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5009, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1981, p. 1019, § 1; Ga. L. 1981, p. 1857, § 42; Ga. L. 1993, p. 1502, §§ 5, 6; Ga. L. 2007, p. 309, § 12/HB 219.)

Cross references. — Regulation of size, weight, and other characteristics of motor vehicles operated on highways of state, § 32-6-20 et seq. Regulation of motor carriers generally, T. 46, C. 7.

48-9-10. Refunds of motor fuel taxes, in general; application for refund permit; contents; refunds to persons using gasoline for agricultural purposes; amount; retailers; separate claims; amount; interest.

(a)(1) Retail dealers and persons using gasoline for agricultural purposes are entitled to a refund of motor fuel taxes as provided by this Code section. The right to receive any refund shall not be assignable and any assignment shall be void and of no effect. No payment shall be made by the commissioner to any person other than the original person entitled to the refund. To enable the commissioner to make the refunds as authorized by this Code section, the Office of the State Treasurer, under warrants drawn by the Governor, shall

remit to the commissioner from funds appropriated by law an amount equivalent to the refunds. Before the Governor issues a warrant for the funds, he shall require the commissioner to certify the name of each applicant and the amount to which each applicant is entitled.

(2) In order for any person to be eligible for the refund provided by this Code section, the person must obtain a refund permit issued by the commissioner. The permit application shall state the information required by the commissioner to establish the right of the person to obtain a refund. In order to receive the refund, the applicant shall file with the commissioner a claim as prescribed by the commissioner and shall attach invoices to show proof of purchase, payment of tax, and total accountability of the motor fuel handled, consumed, or sold. Invoices submitted for proof of purchase shall contain no alterations or corrections of the name or dates originally shown on the invoice. No invoice that bears a date falling within a period of time covered by a previously paid refund claim shall be accepted to support the refund claim.

(3) Businesses engaged in the sale and field application of fertilizers, crop protection chemicals, and poultry litter which operate vehicles licensed for agricultural field use as defined in paragraph (.1) of Code Section 48-9-2 are entitled to a refund of motor fuel taxes paid on purchases of diesel fuel. The commissioner shall prescribe a simplified method of filing the proper records of taxable diesel fuel purchases used exclusively for agricultural field use vehicles which shall serve as the basis for the refund. The refund shall be computed by multiplying the total annual volume of taxable diesel fuel purchases used exclusively for agricultural field use vehicles, times the combined total of the current state motor fuel tax and the second motor fuel tax, with the resulting product further multiplied by a factor of .90. The commissioner shall adopt such additional rules and regulations as may be necessary to provide for the proper administration of this paragraph.

(b)(1) Every person who purchases gasoline in quantities of 25 gallons or more, when the gasoline is used in operating farm tractors and other equipment used for the production of agricultural crops on land owned or leased by such person, shall be entitled to a refund of all of the taxes imposed on gasoline by paragraph (1) of subsection (a) of Code Section 48-9-3 except 1¢ per gallon, subject to the rules and regulations adopted by the commissioner. All applications for refunds must be filed with the commissioner within 18 months from the date of purchase of the gasoline on which the refund is claimed.

(2) Every person who purchases fuel oils, except those dyed fuel oils as defined in Code Section 48-9-2, in quantities of 25 gallons or more, when the fuel oils are used in operating equipment used for

nonhighway purposes, shall be entitled to a refund of all of the taxes imposed on fuel oils by paragraph (1) of subsection (a) of Code Section 48-9-3 except that no interest shall be paid. All applications for refunds must be filed with the commissioner within 18 months from the date of purchase of the fuel oils on which the refund is claimed.

(c) Every person who purchases motor fuel in bulk quantities and sells the motor fuel at retail shall be entitled to a refund of 2 percent of the first 5 1/2¢ per gallon of the motor fuel taxes as compensation to cover losses for evaporation, shrinkage, and spillage. A licensed distributor of a type of motor fuel is not entitled to this refund on fuel for which the distributor holds a license. All applications for refunds must be filed with the commissioner within six months from the date of purchase of the motor fuel on which the refund is claimed. Separate claims shall be made to reflect the operations of each retail location at which motor fuel is sold at retail if more than one retail location is operated by the applicant.

(d) Refunds claimed and paid pursuant to this Code section shall not bear interest. (Code 1933, § 92-1411, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5007, 91A-5018, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5010, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1980, p. 10, § 34; Ga. L. 1982, p. 3, § 48; Ga. L. 1990, p. 799, § 4; Ga. L. 1992, p. 2095, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1998, p. 1580, § 2; Ga. L. 2004, p. 425, § 5; Ga. L. 2010, p. 863, § 2/SB 296.)

Law reviews. — For note as to the voluntary payment doctrine in Georgia, see 16 Ga. L. Rev. 893 (1982).

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Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 92-1403 and 92-1407, prior to amendment by Ga. L. 1978, p. 186, § 1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Refunds are to be made to taxpayers. — Retailer, like the distributor, of gasoline is not a taxpayer in the capacity of collecting the motor fuel taxes and turning the taxes over to the commissioner. *Maynard v. Thrasher*, 77 Ga. App. 316, 48 S.E.2d 473 (1948) (decided under former Code 1933, § 92-1407, prior to amendment by Ga. L. 1978, p. 186, § 1).

Who qualifies as a retailer. — Gaso-

line supplier, selling at tank wagon price, when the station premises are leased to a lessee-dealer and the gasoline is consigned to the dealer, would not be considered a retailer so as to qualify for the 2 percent refund. 1963-65 Op. Att'y Gen. p. 268 (decided under former Code 1933, § 92-1407, prior to amendment by Ga. L. 1978, p. 186, § 1).

Tax refund for gasoline used for agricultural purposes. — In order to qualify for the refund, the claimant must be using the gasoline in the operation of tractors or other farm equipment which is used exclusively for agricultural purposes and farm operations. Therefore, to be entitled to a refund, the claimant must be engaged in agriculture, that is, tilling the soil for the production of "crops" as that

term was defined at common law. These crops must be of the type which owe the crops' existence to the cultivation of the land by the yearly labor of people. Perennial trees, bushes, and grasses do not qualify. 1963-65 Op. Att'y Gen. p. 191 (decided under former Code 1933, § 92-1403, prior to amendment by Ga. L. 1978, p. 186, § 1).

As to livestock and poultry, the eligibility for gasoline tax refund should be limited to where the actual production thereof was a part of a bona fide farm operation. In other words, if cattle were placed in a pen and no use of the land was made to grow any part of the feed nor any part of the land used for the purpose of grazing, then the cattle production would not be a farm operation and, therefore, not eligible for a gasoline tax refund. But when livestock is produced as a bona fide part of the farm operation, when the production of the land and the agricultural pursuit is marketed or used through the means of livestock, the person should be entitled to the refund and not be penalized and denied a refund because of livestock production. 1962 Op. Att'y Gen. p. 8 (decided under former Code 1933, § 92-1403, prior to amendment by Ga. L. 1978, p. 186, § 1).

Person engaged in the production of poultry is farming within the language of this section, and in the event the person otherwise fulfills the terms and conditions prescribed by the statute, the person would be entitled to a gasoline tax refund. 1962 Op. Att'y Gen. p. 16 (decided under former Code 1933, § 92-1403, prior to amendment by Ga. L. 1978, p. 186, § 1; see O.C.G.A. § 48-9-10).

When a person takes another's poultry and another's feed and in effect sells services in caring for and feeding the poultry, when no part of the acreage is used to produce any feed or grazing for the poultry produced, the person should not be entitled to the refund, but when a person owns acreage that is used for the production of the feed, or to provide grazing for the poultry, that person should not be denied the refund. 1962 Op. Att'y Gen. p. 18 (decided under former Code 1933, § 92-1403, prior to amendment by Ga. L. 1978, p. 186, § 1).

As to nurseries, a refund should be allowed to the extent that the gasoline is used in the production of nursery products that is in truth and in fact a farm operation. 1962 Op. Att'y Gen. p. 8; 1962 Op. Att'y Gen. p. 516 (decided under former Code 1933, § 92-1403, prior to Ga. L. 1978, p. 186, § 1).

Foreign farm operators also entitled to refund. — Foreign farm operator otherwise qualifying for gasoline tax refund for gasolines purchased for farm use would not be denied a refund simply because the operator is not a resident of this state. 1962 Op. Att'y Gen. p. 518 (decided under former Code 1933, § 92-1403, prior to amendment by Ga. L. 1978, p. 186, § 1).

Turpentine company which utilizes tractors for the purpose of plowing firebreaks is not entitled to a vendee's tax refund permit for the gasoline used in such tractors. 1952-53 Op. Att'y Gen. p. 460 (decided under former Code 1933, § 92-1403, prior to amendment by Ga. L. 1978, p. 186, § 1).

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, § 112 et seq.

ALR. — Right to interest on tax refund or credit, 112 ALR 1183; 88 ALR2d 823.

Retrospective operation of statute enlarging or shortening period for claim of tax refund, 163 ALR 778.

When right to refund of state or local taxes accrues, within statute limiting

time for applying for refund, 46 ALR2d 1350.

Right to interest on tax refund or credit in absence of specific controlling statute, 88 ALR2d 823.

Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund, 1 ALR6th 1.

48-9-10.1. Refunds of sales and use taxes to credit card issuers.

(a) As used in this Code section, the term:

(1) "Credit card issuer" means the party that extends credit, through the issuance of a credit card, to the qualified governmental tax-exempt entity that purchases "motor fuel" for "highway use" as those terms are defined under Code Section 48-9-2 for a qualified governmental tax-exempt entity's exclusive use.

(2) "Qualified governmental tax-exempt entity" means a government entity that is exempt from sales and use tax under Chapter 8 of this title, or other provision of general law.

(b) In the event that a sale of motor fuel for highway use is made to a qualified governmental tax-exempt entity by means of a credit card issued by a credit card issuer to the qualified governmental tax-exempt entity when such credit card issuer invoices and bills such qualified governmental tax-exempt entity net of the applicable taxes, such credit card issuer may obtain a refund for the sales and use taxes paid on such sales.

(c) In order for a credit card issuer to be eligible to claim a refund of sales and use taxes provided under this Code section, the credit card issuer must be registered with the Internal Revenue Service under Section 4101 of the Internal Revenue Code as a credit card issuer; establish that it has not collected the tax from the qualified governmental tax-exempt entity that purchased the motor fuel; establish that it repaid the amount of the tax to the dealer in full with all applicable taxes included; and has obtained the written consent of the dealer for the allowance of the credit or refund or has otherwise made arrangements which directly or indirectly provide the dealer with reimbursement of the tax.

(d) Refunds of sales and use tax pursuant to this Code section shall be made without interest.

(e) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section. (Code 1981, § 48-9-10.1, enacted by Ga. L. 2009, p. 813, § 2/HB 441; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "of this title" for "of Title 48" in paragraph (a)(2); revised punctuation in subsection (b); and, in subsection (c), substituted

"registered with the" for "registered with" near the beginning, substituted "entity that" for "entity who" near the middle, and substituted "dealer for" for "dealer to" near the end.

48-9-11. Falsely swearing on application for refund of gasoline tax under Code Section 48-9-10; penalty.

(a) It shall be unlawful for any person falsely to swear to a refund application, information statement, or any sworn statement made in connection with the procurement of a refund of gasoline tax under Code Section 48-9-10 when such person knows that any statement contained in the statement or application is false.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1946, p. 19, § 1; Code 1933, § 91A-9944, enacted by Ga. L. 1978, p. 309, § 2.)

Cross references. — False swearing generally, § 16-10-71.

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Perjury, §§ 2, 3, 5 et seq.

48-9-12. Powers of the commissioner; notice of cancellation of license; retention of bonds; public inspection of records; assessment based on commissioner's estimate; agreements for time extension; list of licensed distributors.

(a) In addition to his other duties and responsibilities to administer this article, the commissioner is empowered and authorized to do, but is not limited to, the following:

(1) Deny or cancel any distributor's or aviation gasoline dealer's license if the commissioner is of the opinion that the license application is not filed in good faith or is filed by some person as a subterfuge for any other person;

(2) Cancel any distributor's or aviation gasoline dealer's license for failure to comply with any provision of this article or with rules and regulations adopted by the commissioner;

(3) Cancel a license upon receipt of a written request from any distributor or aviation gasoline dealer licensed under this article to cancel the license issued to the distributor or aviation gasoline dealer. The distributor or aviation gasoline dealer shall surrender to the commissioner the license certificate issued;

(4) Cancel the license of a distributor if, upon investigation or information obtained from the distributor's monthly report, the commissioner ascertains that any distributor to whom a license has been issued is no longer engaged in the receipt, use, or sale of motor

fuel and has not been so engaged for a period of six months, or no longer qualifies as a distributor under this article. Written notice of the cancellation shall be mailed to the last known address of the distributor, in which event the license certificate previously issued to the distributor shall be surrendered to the commissioner;

(5) Reinstate a canceled license when information is provided at a hearing or otherwise within 30 days of cancellation which satisfies the commissioner that the license should be reinstated;

(6) Decline to approve a refund payment until the applicant has complied with the laws of this state if in the opinion of the commissioner the refund application filed by an applicant contains a false statement or if the applicant is indebted to the state;

(7) Suspend the right of the refund privilege of a person for a term of not more than 12 months if the commissioner concludes that any retail dealer, any person using gasoline for agricultural purposes, or any foreign government official has willfully violated this article or has willfully failed to comply with the rules and regulations adopted by the commissioner for the administration of this article;

(8) Waive the bond and the report required of a licensed distributor of fuel oils, compressed petroleum gas, or special fuel if the distributor has no taxable sales of the fuel and his receipts do not exceed 12,000 gallons per year and with respect to such distributors waive requirements for record keeping on sales that do not exceed 25 gallons in one transaction;

(9) Enter into agreements with appropriate authorities of other jurisdictions having statutes similar to this article for the cooperative audit of any taxpayer's reports and refunds. In performing the audits or parts of audits, the officers and employees of other jurisdictions shall be deemed authorized agents of the commissioner for the agreed upon purpose; and

(10) Appoint revenue agents for the enforcement of this article. The appointed agents shall have all powers of a police officer of this state when engaged in the enforcement of this article.

(b) The commissioner shall notify the distributor or aviation gasoline dealer in writing of any cancellation of a license as provided in subsection (a) of this Code section by certified mail or statutory overnight delivery to the last known address of the distributor or aviation gasoline dealer appearing in the files of the commissioner.

(c) In the event that the license of any distributor is canceled by the commissioner under the authority of this article, the commissioner shall hold the bonds of the distributor for a period of three years against

any liabilities of the distributor. In no event shall any bonds surrendered remove any liability.

(d) The commissioner shall make the motor fuel tax records available for inspection by the public at reasonable times. The commissioner may charge a fee for special requests of prepared information based on the cost to prepare the information.

(e) When any distributor neglects or refuses to file the required reports or fails to maintain auditable records that account for tax exemptions taken on motor fuel as required by this article or files an incorrect or fraudulent report, the commissioner or his authorized agents shall determine from the best information available the number of gallons of motor fuel to be taxed. The commissioner shall impose the tax, penalty, and interest due. Estimates by the commissioner or his authorized agents shall be prima-facie evidence of the claim of the state and the burden of proof to establish the accountability of motor fuel shall be on the distributor to show that the assessment is incorrect and contrary to law.

(f) Before the expiration of the time prescribed by this article for assessments and refunds of taxes, the commissioner or his delegates may enter into an agreement in writing with the taxpayer to extend such time. The period so agreed upon may be extended by subsequent agreements made in writing before the expiration of the period previously agreed upon.

(g) The commissioner shall prepare and furnish to each known selling licensed distributor a list showing the name and address of each licensed distributor of motor fuels as of the beginning of each fiscal year and shall thereafter during each year supplement the list monthly. (Code 1933, § 92-1413, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5003, 91A-5005, 91A-5006, 91A-5007, 91A-5008, 91A-5009, 91A-5017, 91A-5019, 91A-5020, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5011, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1985, p. 1644, § 2; Ga. L. 1992, p. 6, § 48; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that that Act shall apply with

respect to notices delivered on or after July 1, 2000.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 92-1418, prior to amendment by Ga. L. 1978, p. 186, § 1, which was subsequently repealed but was

succeeded by provisions in this Code section, are included in the annotations for this Code section.

Commissioner has reasonable discretion to waive penalties and inter-

est. 1948-49 Op. Att'y Gen. p. 681 (decided under former Code 1933, § 92-1418 prior to amendment by Ga. L. 1978, p. 186, § 1).

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, § 13 et seq.

48-9-13. Assessments of deficiencies; time limits; timely return; false or fraudulent return; no return; filing of statement by sheriff, receiver, or other officer upon sale of distributor's property; contents.

(a)(1) Except as otherwise provided in paragraph (2) of this subsection, any assessment for taxes due under this article shall be made within the time limits specified in Code Section 48-2-49.

(2) If the distributor has filed a report under this article which contains fraudulent statements or omissions of material facts the effect of which makes the taxpayer's report a fraudulent representation, the commissioner may reopen the tax period and make any additional assessment of taxes due at any time within seven years from the last date on which the report could have been timely filed by the taxpayer.

(b) At the time of advertising for sale the property or franchise of any person who is a distributor, any sheriff, receiver, assignee, master, or other officer shall file with the commissioner a statement containing the following information:

(1) Name or names of the plaintiff or party at whose instance or upon whose account the sale is made;

(2) Name of the person whose property or franchise is to be sold;

(3) The time and place of sale; and

(4) The nature and location of the property. (Code 1933, § 92-1414, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5015, 91A-5017, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5012, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1985, p. 1350, § 4.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 92-1418, prior to amendment by Ga. L. 1978, p. 186, § 1, which was subsequently re-

pealed but was succeeded by provisions of this Code section, are included in the annotations for this Code section.

Priority of lien of prior judgment creditor. — Lien which the state has

under this section upon the property of a distributor for excise taxes collected by the distributor on the sale or use of motor fuel or kerosene does not have priority over the lien of a judgment creditor when the rights of such creditor attached prior to the time the commissioner files notice of the state's lien in the office of the superior court. *Royal Indem. Co. v. Mayor of Savannah*, 209 Ga. 383, 73 S.E.2d 205 (1952) (decided under former Code 1933, § 92-1418, prior to amendment by Ga. L. 1978, p. 186, § 1; see O.C.G.A. §48-9-13).

No greater rights than state ac-

quired by distributor's surety upon subrogation. — When a surety upon the distributor's bond to the state becomes subrogated to the rights of the state by payment of such taxes to the state, the surety takes the position of the state and acquires no greater rights with respect thereto than the state has at the time the surety became subrogated. *Royal Indem. Co. v. Mayor of Savannah*, 209 Ga. 383, 73 S.E.2d 205 (1952) (decided under former Code 1933, § 92-1418, prior to amendment by Ga. L. 1978, p. 186, § 1).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 536.

C.J.S. — 53 C.J.S., Licenses, § 106.

ALR. — Construction and application

of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 ALR 107.

48-9-14. Second motor fuel tax; rate; exemptions; applicability of Article 1 of Chapter 8 of this title.

(a) In addition to the motor fuel tax imposed by Code Section 48-9-3, there is imposed a second motor fuel tax.

(b)(1) The motor fuel tax imposed by this Code section is levied at the rate of 3 percent of the retail sale price less the tax imposed by Code Section 48-9-3 upon the sale, use, or consumption, as defined in Code Section 48-8-2, of motor fuel in this state. This tax shall be subject only to the exemptions provided in Code Section 48-9-3.

(2)(A) As used in this paragraph, the term "prepaid state tax" shall have the same meaning as provided in paragraph (5.2) of Code Section 48-8-2.

(B) At the time the tax imposed by Code Section 48-9-3 attaches to a sale or transfer of motor fuels, a prepaid state tax shall be collected. The same person remitting the tax imposed under Code Section 48-9-3, but on a separate schedule, shall remit the prepaid state tax to the state. The tax shall be separately invoiced throughout the chain of distribution until it reaches the dealer who makes the retail sale. The commissioner shall issue the rate of prepaid state tax on a semiannual basis, rounded to the nearest \$.001 per gallon for use in the following semiannual period. The rate shall be calculated at 4 percent of the state-wide average retail price by motor fuel type as compiled by the Energy Information Agency of the United States Department of Energy, the Oil Pricing Information Service, or a similar reliable published index less taxes

imposed under Code Section 48-9-3, this subsection, and all local sales and use taxes. In the event that the retail price changes by 25 percent or more within a semiannual period, the commissioner shall issue a revised prepaid state tax rate for the remainder of that period.

(c)(1) Except as otherwise provided in paragraph (2) of this subsection, in all other respects, the tax imposed by this Code section shall be administered and collected and penalties and interest shall be imposed in the same manner as the sales and use tax collected pursuant to Article 1 of Chapter 8 of this title.

(2) Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50. (Code 1933, § 92-1420, enacted by Ga. L. 1979, p. 1274, § 2; Code 1933, § 91A-5015, enacted by Ga. L. 1979, p. 1274, § 4; Ga. L. 1992, p. 815, § 4; Ga. L. 1993, p. 995, § 2; Ga. L. 2003, p. 355, § 6; Ga. L. 2003, p. 665, § 16; Ga. L. 2009, p. 8, § 48/SB 46.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, “the” was deleted preceding “semiannual period” in the middle of subparagraph (b)(2)(B).

Pursuant to Code Section 28-9-5, in 2009, “(5.2)” was substituted for “(5.1)” in subparagraph (b)(2)(A).

Editor’s notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2003.’”

Law reviews. — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U.L. Rev. 217 (2011).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Application to sales through post exchanges. — Second motor fuel tax does apply to and may be collected with respect to sales of motor fuel through post exchanges located on federal reservations in Georgia when such fuel is not for exclusive use of the United States. 1980 Op. Att’y Gen. No. 80-29.

American National Red Cross was not liable for the second motor fuel

tax on its purchases of motor fuel because it was a federal instrumentality for purposes of immunity from state taxation; and former Code 1933, § 92-1420, imposing the tax, adopted the exemption of the original Motor Fuel Tax Act, former Code 1933, § 92-1403(b)(4), for sales of motor fuel to the United States. 1980 Op. Att’y Gen. No. 80-28.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 524 et seq. **C.J.S.** — 53 C.J.S., Licenses, § 5.

48-9-15. Officers required to assist in enforcing article; powers.

The commissioner of public safety, each sheriff, and each peace officer shall assist in enforcing this article. Each officer shall have the powers necessary for the enforcement and administration of this article including the power to make arrests, serve process, and appear in court. (Code 1933, § 92-1416, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5020, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5014, enacted by Ga. L. 1979, p. 5, § 102.)

48-9-16. Penalties and interest; untimely return; failure to pay; false or fraudulent returns; failure to file returns; dyed fuel oil violations.

(a) When any distributor or other person required to file a report as provided by this article fails to file the report within the time prescribed, he shall be subject to a penalty of \$50.00 for each such failure.

(b) When any distributor fails to pay the tax or any part of the tax due under Code Section 48-9-3 or 48-9-14, the distributor shall be subject to a penalty of 10 percent of the amount of unpaid taxes due.

(c) In the case of a false or fraudulent return or of a failure to file a return, a specific penalty of 50 percent of the tax due shall be assessed.

(d) When any distributor fails to pay the tax or any part of the tax due under Code Section 48-9-3 or 48-9-14, the distributor shall pay interest on the unpaid tax at the rate specified in Code Section 48-2-40 from the time the tax became due until paid.

(e) When any person:

(1) Sells or delivers any dyed fuel oil when such person knows or has reason to know that the fuel will be consumed in a highway use; or

(2) Consumes any dyed fuel oil for a highway use when such consumer knows or has reason to know that the fuel oil was dyed, such person shall be subject to a penalty of \$1,000.00 or \$10.00 per gallon of dyed fuel oil involved in such sale, delivery, or consumption, whichever amount is greater, and such amount shall be multiplied by the number of prior penalties imposed on such violator under this subsection and the resulting product shall be the penalty to be imposed.

(f) When any person sells or delivers any dyed fuel oil without the notices required under paragraph (5) of subsection (c) of Code Section

48-9-8, such person shall be subject to a penalty which shall be the greater of the following:

(1) One hundred dollars per month for each month or part of a month in which such sale or delivery occurred; or

(2) One dollar per gallon of dyed fuel oil involved in such sale or delivery.

Upon a showing of no highway use and reasonable cause, at the commissioner's discretion the penalty under this subsection may be reduced to 10 percent of the amount which ordinarily would have been due or payment of the tax may be accepted in lieu of such penalty. (Code 1933, § 92-1415, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5007, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5013, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1980, p. 10, § 35; Ga. L. 1980, p. 1759, § 2; Ga. L. 1995, p. 359, § 5; Ga. L. 2002, p. 415, § 48; Ga. L. 2003, p. 355, § 7; Ga. L. 2003, p. 665, § 17; Ga. L. 2009, p. 8, § 48/SB 46.)

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively

to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 92-1407, prior to amendment by Ga. L. 1978, p. 186, § 1, which was subsequently repealed but was succeeded by provisions of this Code section, are included in the annotations for this Code section.

This section is self-executing. 1963-65 Op. Att'y Gen. p. 25 (decided

under former Code 1933, § 92-1407, prior to amendment by Ga. L. 1978, p. 186, § 1; see O.C.G.A. § 48-9-16).

Section does not, either directly or indirectly, provide that the penalty and interest become a part of the tax. 1948-49 Op. Att'y Gen. p. 681 (decided under former Code 1933, § 92-1407, prior to amendment by Ga. L. 1978, p. 186, § 1; see O.C.G.A. § 48-9-16).

RESEARCH REFERENCES

ALR. — Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity, 96 ALR 925; 147 ALR 142.

Penalty for nonpayment of taxes when due as affected by lack of notice to taxpayer, 102 ALR 405.

Doubt as to liability for, or as to person to whom to pay, tax, as affecting liability for penalties and interest, 137 ALR 306.

Recovery of cumulative statutory penalties, 71 ALR2d 986.

48-9-17. Violations of article; penalties.

(a)(1) With respect to this article, it shall be unlawful for any person to:

(A) Refuse or neglect to make any required statement, report, or return;

(B) Knowingly make, or aid or assist any other person in making, a false statement in a return or report to the commissioner;

(C) Knowingly collect or attempt to collect or cause to be paid to him or to any other person either directly or indirectly any refund of the tax without being entitled to the refund;

(D) Fail to remit the tax to the state;

(E) Engage in business in this state as a distributor without being licensed as required; or

(F) Sell, import, or use any motor fuel which was purchased by such person from any person other than a duly licensed distributor and upon which the tax imposed and not exempted by law has not been paid.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$1,000.00 nor more than \$10,000.00 or by imprisonment for a term of not less than 30 days nor more than 12 months, or both. Each day or part of a day during which any person engages in business as a distributor without being the holder of an uncanceled license shall constitute a separate offense under this subsection.

(b)(1) It shall be unlawful for any person to purchase tax-exempt motor fuel from a licensed distributor for nonhighway use and to use or permit the motor fuel to be used for highway purposes.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$1,000.00 nor more than \$10,000.00 or by imprisonment for not less than 30 days nor more than 12 months, or both.

(c)(1) It shall be unlawful for any person not required by this article to be licensed as a distributor of motor fuel but who is required to file reports as provided by this article willfully to fail to file the report by the twentieth day of the succeeding month for its activities or willfully to fail to remit in the monthly reports the data required by the commissioner for proper administration of this article.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100.00 for the first offense and not less than \$1,000.00 for each subsequent offense.

(d)(1) It shall be unlawful for any person to violate any provision of this article, including, but not limited to, record keeping, or to fail to do any other act required by this article.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$1,000.00 or by imprisonment for not more than 12 months, or both.

(e)(1) It shall be unlawful for any person to import or export motor fuels across the boundaries of this state without a bill of lading from the terminal of origin or equivalent documentation setting out, in addition to the information required by subsection (d) of Code Section 48-9-9, at least the location of the terminal of origin and state or country of destination. The form, procedure, acceptable equivalent documentation, and any additional information shall be set out in rules and regulations as adopted by the commissioner.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(f)(1) It shall be unlawful for any retail dealer, distributor, or bulk user in this state knowingly to accept delivery of motor fuel that is not accompanied by a bill of lading, invoice, or other shipping document, as specified in paragraph (3) of subsection (d) of Code Section 48-9-9, issued by the terminal operator which sets out on its face Georgia as the state of destination.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and become jointly liable with the distributor of the motor fuels for the taxes due under this article.

(3) In the event the shipment of motor fuel did not originate from a terminal whose operator is obligated to set out this information, the commissioner is authorized to adopt by rules or regulations equivalent documentation requirements. The commissioner is further authorized to adopt rules and regulations setting out procedures to amend such documentation should the shipment have to be diverted from its original destination. (Code 1933, § 92-1418, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-9918, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 111; Ga. L. 1993, p. 1502, § 7.)

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 1721 et seq., 1785.

48-9-18. Operation without distributor's license; assessment of penalty in lieu of taxes.

If any person required by this article to hold an uncanceled distributor's license engages in business in this state as a distributor without such a license, thereby incurring a tax liability under this article which, but for the fact that such person was unlicensed, would not have been incurred, the commissioner may in his discretion waive such tax liability, including any applicable penalties and interest thereon, and assess in lieu thereof a penalty under this Code section. Such penalty shall be equal to 10 percent of the tax liability which, but for the fact that such person was unlicensed, would not have been incurred, but shall not be less than \$100.00 for each monthly tax period involved. No taxes shall be waived under this Code section where the commissioner determines that such person failed to become properly licensed prior to operating as a distributor in this state, that such person knew or should have known of the requirement that he be licensed prior to so operating, and that such person failed to remit to the state such taxes under this article as are due from licensed distributors. (Code 1981, § 48-9-18, enacted by Ga. L. 1990, p. 799, § 5.)

48-9-19. Cooperative agreements with other states.

(a) The commissioner may enter into cooperative agreements with other states for exchange of information in administering the tax imposed by this article. No agreement, arrangement, declaration, or amendment to an agreement shall be effective until stated in writing and approved by the commissioner.

(b) An agreement may provide for determining the base state for motor carriers; records requirements; audit procedures; exchange of information; persons eligible for tax licensing; defining qualified motor vehicles; determining if bonding is required; specifying reporting requirements and periods, including defining uniform penalty and interest rates for late reporting; determining methods for collecting and forwarding of gasoline or other motor fuel taxes and penalties to another jurisdiction; and such other provisions as will facilitate the administration of the agreement.

(c) The commissioner may, as required by the terms of an agreement, forward to officials of another state any information in the department's possession relative to the use of gasoline or other motor fuels by any motor carrier. The commissioner may disclose to officials of another

state the location of offices, motor vehicles, and other real and personal property of motor carriers.

(d) An agreement may provide for each state to audit the records of motor carriers based in that state to determine if the gasoline or other motor fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on motor carriers based in that state to each state in which the motor carrier has taxable use of gasoline or other motor fuels. For motor carriers not based in this state who have taxable use of gasoline or other motor fuels in this state, the commissioner may utilize the audit findings received from another state as the basis upon which to propose assessments of gasoline or other motor fuel taxes against the motor carrier as though the audit had been conducted by the commissioner. Penalties and interest shall be assessed at the rates provided in the agreement.

(e) No agreement entered into pursuant to this Code section may preclude the department from auditing the records of any motor carrier covered by this chapter.

(f) Any assessment or order made under this Code section shall be governed by all provisions of this title applicable to assessments and orders under this chapter generally, except to the extent that different treatment is specifically required by this Code section or any agreement entered into pursuant to the authority of this Code section.

(g) If the commissioner enters into any agreement under the authority of this Code section and the provisions set forth in the agreement are in conflict with any provision of any rule or regulation promulgated by the commissioner, the provisions of such agreement shall prevail. (Code 1981, § 48-9-19, enacted by Ga. L. 1990, p. 799, § 5.)

48-9-20. Temporary exemption of motor fuels from state sales and use tax, excise tax, and second motor fuel tax.

Repealed by Ga. L. 2005, p. ES3, § 2/HB 1EX, effective October 1, 2005.

Editor's notes. — This Code section was based on Code 1981, § 48-9-20, enacted by Ga. L. 2005, p. ES 3, § 2/HB 1EX.

ARTICLE 2

ROAD TAX ON MOTOR CARRIERS

Cross references. — Motor carriers generally, T. 46, C. 7.

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1937, p. 167, which was subsequently repealed but was succeeded by provisions in this article, are included in the annotations for this article.

Nature of tax. — Motor fuel tax laws found in former Code 1933, Ch. 92-14 and

Ga. L. 1968, p. 360 showed that the motor fuel taxes are of the nature of a road use tax. This was true because the funds collected must be used to construct and maintain the highways. 1963-65 Op. Att’y Gen. p. 92 (decided under Ga. L. 1937, p. 167).

RESEARCH REFERENCES

ALR. — Constitutionality of statutes or ordinances for taxation of common carriers by automobile, 75 ALR 13.

Constitutionality of retroactive statute imposing excise, license, or privilege tax, 146 ALR 1011.

48-9-30. Definitions.

As used in this article, the term:

(1) “Motor carrier” means any person who operates or causes to be operated any motor vehicle, as defined in this Code section, on any highway in this state.

(2) “Motor fuel” means any liquid, regardless of its composition or properties, used to propel a motor vehicle.

(3) “Motor vehicle” means any passenger vehicle that has seats for more than 20 passengers in addition to the driver and any vehicle or combination of vehicles used, designed, or maintained for transportation of property and having two axles and a gross vehicle weight exceeding 26,000 pounds or having three or more axles regardless of weight. The term “motor vehicle” does not mean:

- (A) School buses;
- (B) Vehicles operated by the state, any political subdivision of the state, or the United States; or
- (C) Transit buses operated exclusively within this state.

(4) “Operations” means operation of any motor vehicle, whether loaded or empty, whether or not for compensation, and whether owned by or leased to the motor carrier who operates it or causes it to be operated. (Ga. L. 1968, p. 360, § 1; Code 1933, § 91A-5101, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 103; Ga. L. 1981, p. 1857, § 43; Ga. L. 1992, p. 2095, § 2.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 1
et seq.

48-9-31. Road tax on motor carriers; rate; basis of calculation; additional tax.

A road tax for the privilege of using the streets and highways of this state is imposed upon every motor carrier. The tax shall be equivalent to the taxes imposed by Article 1 of this chapter and shall be calculated on the amount of motor fuel used by the motor carrier in its operations within this state. Except as credit for certain taxes as provided in this article, the tax imposed on motor carriers by this Code section is in addition to taxes imposed on motor carriers by any other law. (Ga. L. 1968, p. 360, § 2; Code 1933, § 91A-5102, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 36.)

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 365 et
seq.

48-9-32. Payment of road tax; time; calculation on amount of motor fuel used in state; formula.

For the purposes of making payment of taxes and filing reports pursuant to this article, the year is divided into four quarters of three consecutive months each. The first quarter of the year shall consist of the months of January, February, and March. The road tax shall be paid by each motor carrier to the commissioner on or before the last day of the month immediately following the quarter with respect to which tax liability under this article accrues and shall be calculated upon the amount of motor fuel used by the motor carrier in its operations within this state during the quarter ending on the last day of the preceding month. The amount of motor fuel used in the operations of any motor carrier within this state shall be the proportion of the total amount of motor fuel used in its entire operations within and outside this state which the total number of miles traveled within this state bears to the total number of miles traveled within and outside this state. (Ga. L. 1968, p. 360, § 3; Code 1933, § 91A-5103, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, § 372.

48-9-33. Reports of motor carriers; time; exemption.

Every motor carrier subject to the road tax imposed by this article shall make to the commissioner on or before the last day of April, July, October, and January such reports of its operations during the quarter of the year ending on the last day of the preceding month as the commissioner requires. The commissioner may by regulation permit motor carriers having an annual road tax not in excess of an amount set by the commissioner to file annual reports. The commissioner by regulation may exempt from the reporting requirements of this Code section motor carriers all of whose operations are within this state. (Ga. L. 1968, p. 360, § 6; Code 1933, § 91A-5106, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 799, § 6.)

48-9-34. Joint reports by passenger motor carriers; basis of calculation of taxes due; liability; contents of reports; credits and refunds; required inclusion of certain motor carriers.

(a) Two or more motor carriers regularly engaged in the transportation of passengers on through buses and on through tickets in pool service, at their option and with the consent of the commissioner, may make joint reports of their entire operations in this state. The road taxes imposed by this article shall be calculated on the basis of the joint reports as though the motor carriers were a single motor carrier. The motor carriers making the reports shall be jointly and severally liable for the taxes.

(b) Joint reports authorized by this Code section shall show the total number of miles traveled in this state and the total number of gallons of motor fuel purchased in this state by the reporting motor carriers. Credits or refunds to which the motor carriers are entitled shall not be allowed as credits or refunds to any other motor carrier. Motor carriers filing joint reports, however, shall permit all motor carriers engaged in this state in pool operations with them to join in filing joint reports. (Ga. L. 1968, p. 360, § 8; Code 1933, § 91A-5108, enacted by Ga. L. 1978, p. 309, § 2.)

48-9-35. Credit against road tax for payment of motor fuel tax; evidence of payments; subsequent application of credit exceeding amount of road tax; limit.

Every motor carrier subject to the road tax shall be entitled to a credit on the tax equivalent to the amount of motor fuel tax imposed by Article 1 of this chapter on all motor fuel purchased by the motor carrier during the quarter within this state for use in operations either within or

outside this state when the motor fuel tax imposed by this state has been paid by the motor carrier. Evidence of the payments of the motor fuel tax in the form required by the commissioner shall be furnished by each motor carrier claiming the credit allowed. When the amount of the credit to which any motor carrier is entitled for any quarter exceeds the amount of the road tax for which the carrier is liable for same quarter, the excess may be allowed pursuant to regulations promulgated by the commissioner as a credit on the road tax for which the motor carrier would be otherwise liable for the subsequent quarter or quarters. Allowed credits may be carried forward and utilized no later than the succeeding two calendar years. (Ga. L. 1968, p. 360, § 4; Code 1933, § 91A-5104, enacted by Ga. L. 1978, p. 309, § 2.)

48-9-36. Refunds to motor carriers; minimum credit refundable; applications; procedure; bond; audit of applicant's records; procedure for issuance of refunds; interest.

(a) Any motor carrier which accrues credits in excess of 2,000 gallons in any quarter under Code Section 48-9-35 shall be entitled to a refund of the credits subject to the conditions set forth in this Code section.

(b) All applications for refunds must be filed with the commissioner within 180 days from the end of any quarter in which credits are accumulated. Applications shall be in the form prescribed by the commissioner, shall be sworn to, and shall be supported by evidence satisfactory to the commissioner.

(c) Any motor carrier entitled to a refund may give a bond in an amount of not less than \$1,000.00 payable to the state and conditioned that the motor carrier will pay all road taxes due and to become due under this article. As long as the bond remains in force, the commissioner may issue refunds to the motor carrier in the amounts appearing to be due on applications without first auditing the records of the motor carrier. The bond shall be in the form and with such surety as required by the commissioner.

(d) The commissioner shall not issue refunds in excess of the amount of the bond or bonds except after audit of the applicant's records. Except as otherwise provided by the commissioner, sufficient records must be produced in this state for audit.

(e) To enable the commissioner to make the refunds authorized by this Code section, the Office of the State Treasurer, under warrants drawn by the Governor, shall remit to the commissioner, from funds appropriated by law for that purpose, an amount equivalent to the refunds. Before the Governor issues a warrant for this purpose, he shall require that the commissioner certify the name of each applicant and the amount to which he is entitled. The refunds provided by this Code section shall be nonassignable.

(f) Refunds claimed and paid pursuant to this Code section shall bear no interest. (Ga. L. 1968, p. 360, § 5; Ga. L. 1971, p. 684, § 1; Code 1933, § 91A-5105, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 104; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

Law reviews. — For note as to the voluntary payment doctrine in Georgia, see 16 Ga. L. Rev. 893 (1982).

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, § 112 et seq.

ALR. — Retrospective operation of statute enlarging or shortening period for claim of tax refund, 163 ALR 778.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 ALR2d 1350.

48-9-37. Lessee and lessor of motor vehicles as motor carriers; determination of status; primary liability; effect of failure to discharge liability.

(a) The lessee of a motor vehicle, but not the lessor of a motor vehicle, shall be deemed a motor carrier for the purposes of this article unless otherwise specifically provided in this Code section.

(b) A lessor of motor vehicles may be deemed a motor carrier with respect to motor vehicles leased to others by him and with respect to motor fuel consumed by the motor vehicles when the lessor supplies or pays for the motor fuel consumed by the motor vehicles or makes rental or other charges calculated to include the cost of the motor fuel. The commissioner shall provide by rules and regulations for the presentation to other motor carriers and to the general public of satisfactory evidence and identification of the motor carrier status. Any lessee motor carrier may exclude from his reports pursuant to this article motor vehicles of which he is the lessee when the motor vehicles have been leased from a lessor who is a motor carrier pursuant to this Code section.

(c) Subsections (a) and (b) of this Code section shall govern primary liability of lessors and lessees of motor vehicles pursuant to this article. If a lessor or lessee who is primarily liable fails in whole or in part to discharge this liability, the failing party or other lessor or lessee party to the transaction shall be jointly and severally responsible and liable for compliance with this article and for the payment of any tax due pursuant to this article. The aggregate amount of any taxes collected by the state pursuant to this article, however, shall not exceed the total amount of tax due on the account of the transaction in question together with any costs and penalties imposed. (Ga. L. 1968, p. 360, § 7; Code 1933, § 91A-5107, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

ALR. — Construction and effect of motor vehicle leasing contracts, 43 ALR3d 1283.

48-9-38. Requirement of motor vehicle registration card and identification marker; validity; renewal; fee; temporary authorizations; temporary permits; fee.

(a) Unless otherwise excluded from the scope of this article, no motor carrier shall operate or cause to be operated in this state any motor vehicle unless and until he has:

(1) Registered with the commissioner and secured a motor carrier registration card. A duplicate of the registration card shall be carried in each motor vehicle at all times in this state; and

(2) Secured from the commissioner an identification marker for each motor vehicle. The identification marker shall be attached or affixed to the motor vehicle in the place and manner prescribed by the commissioner so that the marker is clearly displayed at all times.

(b) Registration cards and identification markers shall be issued on an annual basis as of January 1 of each year and shall be valid until the next succeeding December 31. The commissioner, in his discretion, may authorize renewal of registration cards and identification markers without the necessity of issuing new cards and markers. All registration cards and identification markers issued by the commissioner shall remain the property of the state and may be recalled for any violation of this article or of the regulations promulgated under this article. The commissioner shall not issue a registration card or an identification marker to any motor carrier who has outstanding motor carrier, motor fuel, sales, or income tax liabilities or other penalties or fees owed to the Department of Transportation of this state unless the liabilities are being appealed as provided by law.

(c) Prior to the issuance of each identification marker, a fee of \$3.00 shall be paid to the commissioner. Upon application for identification markers by a motor carrier, the applicant shall declare the type of fuel used in vehicles for which identification markers are to be issued and any other information that the commissioner may require for the effective administration of this article.

(d) The commissioner may authorize a motor vehicle to be operated in an emergency without a registration card and identification marker for a period not in excess of 30 days. The authorization shall be granted by letter or facsimile message.

(e) A motor carrier may obtain a temporary permit which shall be good for one motor vehicle for a period of ten consecutive days beginning

and ending on the dates specified on the face of the permit. Temporary permits are to be obtained by motor carriers having only infrequent trips into and through this state. The fee for the permit shall be \$16.00 and no reports shall be required from such motor carriers. Temporary permits shall be issued in lieu of annual registration required under this article. A temporary permit shall be carried in the vehicle for which it was issued at all times when the vehicle is in this state. The commissioner may issue a temporary permit by facsimile message or letter. (Ga. L. 1968, p. 360, § 9; Code 1933, § 91A-5109, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 1609, § 1; Ga. L. 1979, p. 5, § 105; Ga. L. 1981, p. 1857, § 44; Ga. L. 1992, p. 2095, § 3.)

48-9-39. Violation of Code Section 48-9-38; penalty.

(a) It shall be unlawful for any person to operate or cause to be operated on any highway in this state any motor vehicle that does not carry the registration card required by Code Section 48-9-38 or any motor vehicle that does not display in the manner prescribed by the commissioner the identification marker that Code Section 48-9-38 requires to be displayed.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$50.00 nor more than \$200.00. Each day's operation in violation of this Code section shall constitute a separate offense. (Ga. L. 1968, p. 360, § 18; Code 1933, § 91A-9920, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles,
§ 700.

48-9-40. Keeping and preservation of records; inspection; estimate of amount of road tax due; prima-facie evidence; burden of proof; agreements with certain jurisdictions for cooperative audits.

(a) Every motor carrier shall keep such records as may be necessary for the effective administration of this article and for the reporting and justification of the amount of tax liability pursuant to this article. All such records shall be kept in the form required by the commissioner and shall be safely preserved for a period of three years in such a manner as to ensure their security and availability for inspection by the commissioner or his authorized agents. Upon application in writing after an audit of the motor carrier's records has been made, the commissioner may consent to the destruction of the records within the three-year period.

(b) The commissioner and his authorized agents and representatives may inspect during regular business hours the books and records of any motor carrier subject to the road tax imposed by this article.

(c) Whenever any motor carrier neglects or refuses to file any report or neglects or refuses to keep records as prescribed by this article, the commissioner, using the best information available, shall estimate, determine, and fix the amount of taxes and penalties payable by the motor carrier under this article. In any action or proceeding under this Code section, any assessment by the commissioner shall constitute prima-facie evidence of the claim of the state. The burden of proof shall be upon the motor carrier to show that the assessment was incorrect or contrary to law.

(d) The commissioner may enter into agreements with the appropriate authorities of other jurisdictions having statutes similar to this article for the cooperative audit of motor carriers' reports and returns. In performing any such audit or part of an audit, the officers and employees of the other jurisdiction or jurisdictions shall be deemed authorized agents of this state for such purpose. (Ga. L. 1968, p. 360, § 10; Code 1933, § 91A-5110, enacted by Ga. L. 1978, p. 309, § 2.)

48-9-41. Assessment of deficiencies; time limits; timely report; false or fraudulent report; no report; procedures for collection.

(a)(1) When any motor carrier is in default in the payment of any road taxes due under this article, the commissioner shall assess the road taxes due in the manner provided by law. Except as otherwise provided in paragraph (2) of this subsection, any assessment for road taxes due under this article shall be made within the time limits specified in Code Section 48-2-49.

(2) When the motor carrier has filed a report under this article which contains fraudulent statements or omissions of material facts, the effect of which is to make the taxpayer's report a fraudulent representation, the commissioner may reopen the tax period and make any additional assessment of taxes due at any time within seven years from the last date on which the report could have been timely filed by the taxpayer.

(b) The commissioner shall collect any deficiencies and road taxes due under this article by levy, garnishment, attachment, or action or by any other provision of law for collection of delinquent state taxes. (Ga. L. 1968, p. 360, § 11; Ga. L. 1972, p. 834, § 1; Code 1933, § 91A-5111, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 1350, § 5.)

RESEARCH REFERENCES

C.J.S. — 40 C.J.S., Highways, §§ 370, 371. of statute prohibiting or restricting reassessment after assessment and payment

ALR. — Construction and application of taxes, 85 ALR 107.

48-9-42. Secretary of State as agent of nonresident motor carriers for service of process or notice.

The acceptance by a nonresident motor carrier of the rights and privileges conferred by law permitting the operation of motor vehicles on the public highways of this state, as evidenced by the operation of a motor vehicle by the nonresident either personally or through an agent or employee on the public highways of this state, or by the operation by the nonresident either personally or through an agent or employee of a motor vehicle on the public highways of this state other than as so permitted or regulated, shall be deemed equivalent to the appointment by the nonresident motor carrier of the Secretary of State or his successor in office as his agent for service of process or notice in any action, assessment proceedings, or other proceeding against him or his personal representative arising out of or by reason of any provision of this article relating to the motor vehicle or relating to the liability for road tax with respect to operation of the motor vehicle on the highways of this state. The acceptance or operation shall be an acknowledgment by the nonresident motor carrier of his agreement that any such process against or notice to him or his personal representative shall be of the same legal force and validity as if the process or notice were served on him personally or on his personal representative. (Ga. L. 1968, p. 360, § 13; Code 1933, § 91A-5113, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48.)

RESEARCH REFERENCES

C.J.S. — 72 C.J.S., Process, § 76.

48-9-43. Assistance by Department of Public Safety in administration and enforcement of article; powers.

The commissioner of public safety shall utilize the personnel of the Department of Public Safety as necessary to assist in enforcing this article. The officers of the Department of Public Safety shall have the powers of peace officers including, but not limited to, the powers of making arrests, serving process, and appearing in court in all matters relating to the administration and enforcement of this article. (Ga. L. 1968, p. 360, § 14; Code 1933, § 91A-5114, enacted by Ga. L. 1978, p. 309, § 2.)

48-9-44. Powers of revenue agents in enforcement of article.

Each person appointed by the commissioner as a special agent or enforcement officer of the department shall have all the powers of a police officer of this state when engaged in the enforcement of this article. (Ga. L. 1972, p. 381, § 1; Code 1933, § 91A-5115, enacted by Ga. L. 1978, p. 309, § 2.)

48-9-45. Penalties; violation of registration provisions; untimely reports; failure to pay; interest; other punitive measures.

(a) Whenever any motor carrier operates a motor vehicle in violation of the registration provisions of this article, the motor carrier shall be subject to a penalty of \$25.00 for each motor vehicle in violation.

(b) Whenever any motor carrier required to file a report as provided by this article fails to file the report within the time prescribed, he shall be subject to a penalty of \$25.00 for each failure to file.

(c) Whenever any motor carrier fails to pay the road taxes or any part of the road taxes due pursuant to this article, the motor carrier shall be subject to a penalty of \$10.00 or 10 percent of the amount of the unpaid tax due, whichever is greater, and to interest on the unpaid tax at the rate specified in Code Section 48-2-40 from the time the road tax became due until the tax is paid.

(d) Any penalties and interest imposed by this Code section shall be assessed and collected by the commissioner in the manner provided by law. In addition to imposing penalties and interest, the commissioner may suspend or revoke any certificate, permit, or other evidence of right issued by the commissioner and held by the motor carrier found to be in default. (Ga. L. 1968, p. 360, § 12; Code 1933, § 91A-5112, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 1759, § 3.)

48-9-46. Making false statement for purpose of obtaining credit, refund, or reduction of liability for tax imposed by article; willful failure to file report; penalty.

(a) It shall be unlawful for any person willfully and knowingly to make a false statement orally or in writing or in the form of a receipt for the sale of motor fuel for the purpose of obtaining or attempting to obtain or assisting any other person to obtain or attempt to obtain a credit, refund, or reduction of liability for taxes under this article.

(b) It shall be unlawful for any person required by this article to make a report willfully to fail to make such report at the time required by law.

(c) Any person who violates subsection (a) or subsection (b) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1968, p. 360, § 17; Code 1933, § 91A-9919, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 12.)

CHAPTER 10

MOTOR VEHICLE LICENSE FEES AND PLATES

Sec.

48-10-1 through 48-10-16 [Redesignated].

Editor's notes. — This chapter, which formerly consisted of Code Sections 48-10-1 through 48-10-16, was redesignated as Article 7 of Chapter 2 of Title 40 by Ga. L. 2002, p. 1074, §§ 1 and 2.

48-10-1 through 48-10-16.

Reserved. Redesignated by Ga. L. 2002, p 1074, effective July 1, 2002.

Editor's notes. — Code Section 48-10-5, concerning transfers of annual license fees, licenses, and plates, etc. which was repealed by Ga. L. 1997, p. 419, § 39, effective May 1, 1997, and which was based on Ga. L. 1937-38, Ex. Sess. p. 259, § 4; Ga. L. 1970, p. 281, § 1; Code 1933, § 91A-5305, enacted by Ga. L. 1978, p. 309, § 2, was stricken and not redesignated by Ga. L. 2002, p. 1074, § 1.

Code Section 48-10-11, concerning the prohibition of operation of two-axle trailers of four or more wheels without certain brakes, which was repealed by Ga. L.

2000, p. 809, § 3, effective July 1, 2000, and which was based on Ga. L. 1937-38, Ex. Sess. p. 259, § 9A; Code 1933, § 91A-5311, enacted by Ga. L. 1978, p. 309, § 2, was stricken and not redesignated by Ga. L. 2002, p. 1074, § 1.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides that: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This Act became effective July 1, 2002.

CHAPTER 11

TAXES ON TOBACCO PRODUCTS

- Sec.
- 48-11-1. Definitions.
- 48-11-2. Excise tax; rate on tobacco products; retail selling price before addition of tax; exemptions; collection and payment on first transaction; dealers or distributors; tax separately identified; collection.
- 48-11-3. Collection of tax by stamps; sale at discount to distributors; basis of discount percentage; alternate method of collection of tax on cigars; prohibition of sale or exchange of stamps with another distributor; redemption.
- 48-11-4. Licensing of persons engaged in tobacco business; initial and annual fees; suspension and revocation; registration and inspection of vending machines; bond by distributor; jurisdiction; licensing of promotional activities.
- 48-11-5. Licensing of nonresident distributors; authorized use of stamps or metering machine; bond; amount; examination of records; service on agent; applicability of chapter to nonresident distributors; reports of shipments.
- 48-11-6. Suspension, refusal of renewal, and revocation of licenses; notice; procedures for hearings; appeals; effect of suspension or refusal to renew on other activities by commissioner.
- 48-11-7. Execution of bonds by distributor; surety.
- 48-11-8. Prohibition of sale or possession of unstamped tobacco products; distributors to affix stamps or otherwise pay tax; payment of tax only once; reports.
- 48-11-9. Seizure as contraband of unstamped tobacco products;

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- exceptions; sale at public auction; procedure; disposition of proceeds; hearing; bond; contraband vending machines.
- 48-11-10. Monthly reports of licensed distributors; contents; authority to require reports from common carriers, warehousemen, and others; penalty for failure to file timely report.
- 48-11-11. Records of distributors and dealers; stock of tobacco products; inspection by commissioner and agents; inspection of records of transportation companies, carriers, and warehouses.
- 48-11-12. Assessment of deficiencies and penalties for incorrect reports, nonpayment of tax, or purchase of insufficient stamps; assumption of illegal sale absent evidence to contrary; penalty for deficiency due to fraud.
- 48-11-13. Tax on persons having tobacco products on which tax under Code Section 48-11-2 not paid; rate; exemptions.
- 48-11-14. Registration, reports, and tax payments of persons acquiring tobacco products subject to tax under Code Section 48-11-13; assessment of tax due from person failing to file or filing incorrect report; hearing; penalties.
- 48-11-15. Procedure for refund of taxes, cost price of affixed stamps, and tax on tobacco products unfit for sale, use, or consumption and destroyed or exported.
- 48-11-16. Purchase of tax stamps on account by licensed distributors; permit; time of payment; bond; cancellation of permit without notice for failure or

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	refusal to comply with Code section; annual payment of any liability outstanding.	48-11-23.	Transporting tobacco products in violation of Code Section 48-11-22; penalty.
48-11-17.	Amount of unpaid tax as lien against property of violators; seizure and sale; recording of lien.	48-11-23.1.	Additional requirements on the sale of tobacco products; seizure and forfeiture of contraband; revocation of licenses.
48-11-18.	Procedure for hearing by persons aggrieved by action of commissioner; initiation of hearings by commissioner; production of evidence; appeals; bond; grounds for not sustaining commissioner's action; costs.	48-11-24.	Penalties for possession of unstamped tobacco products; penalty for operation of unlicensed business or activity; procedure for enforcement and collection of penalties; costs and expenses.
48-11-19.	Powers and duties of special agents and enforcement officers of department; bond; duties following arrests; retention of weapon and badge upon retirement.	48-11-25.	Violations of chapter; penalties.
48-11-20.	Venue as to violations of chapter; commissioner's certificate as prima-facie evidence.	48-11-26.	Failure to file report or filing false report required by chapter; penalty.
48-11-21.	Jurisdiction of superior courts of criminal violations of chapter.	48-11-27.	False entries on invoices or records pursuant to chapter; penalty.
48-11-22.	Transportation of unstamped tobacco products; requirement of invoices or delivery tickets; contents; confiscation and disposition absent invoice or ticket; penalty; applicability.	48-11-28.	Possession, use, manufacture, or other unlawful activities involving counterfeited stamps or tampering with metering machine pursuant to chapter; penalty.
		48-11-29.	Swearing and testifying falsely with respect to matters governed by chapter; penalty [Repealed].
		48-11-30.	Penalty for sale or possession of counterfeit cigarettes.

Cross references. — Procedural enhancements to the Master Settlement Agreement, § 10-13A-1 et seq. Required marking of cigarettes, § 25-14-5. Examination by state auditor of books, records, and accounts of persons required to pay tax upon retail sales price of cigars and cigarettes, § 50-6-5.

Administrative rules and regulations. — Dealer provisions, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Alcohol and Tobacco Tax Division, Chapter 560-8-2.

Distributor provisions, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue,

Alcohol and Tobacco Tax Division, Chapter 560-8-3.

Manufacturer/Importer provisions, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Alcohol and Tobacco Tax Division, Chapter 560-8-4.

Vending machines, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Alcohol and Tobacco Tax Division, Chapter 560-8-5.

Administrative hearings, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Alcohol and Tobacco Tax Division, Chapter 560-8-6.

Law reviews. — For note on the 2003 amendments to various sections throughout this chapter, see 20 Ga. St. U.L. Rev. 233 (2003).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 92-22, which was subsequently repealed but was succeeded by provisions in this chapter, are included in the annotations for this chapter.

What transactions and persons liable. — Former Code 1933, Ch. 92-22 as it stood provided for the imposition of an excise tax liability upon each separate transaction and event in the process of distribution and consumption. The distributor was required initially to advance or pay the tax which in due course was

collected from the ultimate purchaser or consumer. The ultimate purchaser or consumer was the taxpayer. In re Jim Clay Tobacco Co., 355 F. Supp. 274 (N.D. Ga. 1973) (decided under former Code 1933, § 92-22).

When distributor's liability fixed. — Under former Code 1933, Ch. 92-22, taken as a whole, the liability of the distributor was fixed and absolute the moment the distributor came into the possession of cigarettes for the first time. In re Jim Clay Tobacco Co., 355 F. Supp. 274 (N.D. Ga. 1973) (decided under former Code 1933, Ch. 92-22).

RESEARCH REFERENCES

ALR. — Tax on cigarettes or tobacco, or dealers therein, as violating requirement of uniformity or equality in taxation, 62 ALR 105.

Constitutionality of retroactive statute imposing excise, license, or privilege tax, 146 ALR 1011.

Deductibility of other taxes or fees in

computing excise or license taxes, 148 ALR 263; 174 ALR 1263.

Validity, construction, and application of state statutes forbidding possession, transportation, or sale of unstamped or unlicensed cigarettes or other tobacco products, 46 ALR3d 1342.

48-11-1. Definitions.

As used in this chapter, the term:

(1) "Cigar" means any roll for smoking made wholly or in part of tobacco when the cover of the roll is also tobacco. Such term shall include a little cigar.

(2) "Cigar dealer" means any person located within the borders of this state who sells or distributes cigars to a consumer in this state.

(3) "Cigar distributor" means any person, whether located within or outside the borders of this state, other than a cigar dealer, who sells or distributes cigars within or into the boundaries of this state and who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on cigar dealers; and

(B) Is engaged in the business of:

(i) Importing cigars into this state or purchasing cigars from other cigar manufacturers or cigar distributors; and

(ii) Selling the cigars to cigar dealers in this state for resale but is not in the business of selling the cigars directly to the ultimate consumer of the cigars.

(4) "Cigar importer" means any person who imports into or who brokers within the United States, either directly or indirectly, a finished cigar for sale or distribution.

(5) "Cigar manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels a finished cigar.

(6) "Cigarette" means any roll for smoking made wholly or in part of tobacco when the cover of the roll is paper or any substance other than tobacco.

(7) "Cigarette dealer" means any person located within the borders of this state who sells or distributes cigarettes to a consumer in this state.

(8) "Cigarette distributor" means any person, whether located within or outside the borders of this state, other than a cigarette dealer, who sells or distributes cigarettes within or into the boundaries of this state and who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on cigarette dealers; and

(B) Is engaged in the business of:

(i) Importing cigarettes into this state or purchasing cigarettes from other cigarette manufacturers or cigarette distributors; and

(ii) Selling the cigarettes to cigarette dealers in this state for resale but is not in the business of selling the cigarettes directly to the ultimate consumer of the cigarettes.

Such term shall not include any cigarette manufacturer, export warehouse proprietor, or cigarette importer with a valid permit under 26 U.S.C. Section 5712, if such person sells or distributes cigarettes in this state only to cigarette distributors who hold valid and current licenses under Code Section 48-11-4 or to an export warehouse proprietor or another cigarette manufacturer with a valid permit under 26 U.S.C. Section 5712.

(9) "Cigarette importer" means any person who imports into or who brokers within the United States, either directly or indirectly, a finished cigarette for sale or distribution.

(10) "Cigarette manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels a finished cigarette.

(11) "Counterfeit cigarette" means cigarettes that are manufactured, fabricated, assembled, processed, packaged, or labeled by any person other than the trademark owner of a cigarette brand or the owner's designated agent.

(12) "Dealer" means any person who is a cigar dealer, a cigarette dealer, or a loose or smokeless tobacco dealer.

(13) "Distributor" means any person who is a cigar distributor, a cigarette distributor, or a loose or smokeless tobacco distributor.

(14) "First transaction" means the first sale, receipt, purchase, possession, consumption, handling, distribution, or use of cigars, cigarettes, or loose or smokeless tobacco within this state.

(15) "Little cigar" means any cigar weighing not more than three pounds per thousand.

(16) "Loose or smokeless tobacco" means granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but does not include cigarettes or cigars or tobacco purchased for the manufacture of cigarettes or cigars by cigarette manufacturers or cigar manufacturers.

(17) "Loose or smokeless tobacco dealer" means any person located within the borders of this state who sells or distributes loose or smokeless tobacco to a consumer in this state.

(18) "Loose or smokeless tobacco distributor" means any person who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on loose or smokeless tobacco dealers; and

(B) Is engaged in the business of:

(i) Importing loose or smokeless tobacco into this state or purchasing loose or smokeless tobacco from other loose or smokeless tobacco manufacturers or loose or smokeless tobacco distributors; and

(ii) Selling the loose or smokeless tobacco to loose or smokeless tobacco dealers in this state for resale but is not in the business of selling the loose or smokeless tobacco directly to the ultimate consumer of the loose or smokeless tobacco.

(19) “Loose or smokeless tobacco importer” means any person who imports into or who brokers within the United States, either directly or indirectly, finished loose or smokeless tobacco for sale or distribution.

(20) “Loose or smokeless tobacco manufacturer” means any person who manufactures, fabricates, assembles, processes, or labels finished loose or smokeless tobacco.

(21) “Related machinery” means any item, device, conveyance, or vessel of any kind or character used in manufacturing, packaging, labeling, stamping, transporting, distributing, selling, or possessing counterfeit cigarettes.

(22) “Sale” means any sale, transfer, exchange, theft, barter, gift, or offer for sale and distribution in any manner or by any means whatever.

(23) “Stamp” means any impression, device, stamp, label, or print manufactured, printed, made, or affixed as prescribed by the commissioner.

(24) “Vending machine” means any coin-in-the-slot device used for the automatic merchandising of cigars, cigarettes, or loose or smokeless tobacco. (Ga. L. 1955, p. 268, § 2; Ga. L. 1960, p. 125, § 1; Ga. L. 1967, p. 563, § 1; Code 1933, § 91A-5501, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 18; Ga. L. 2004, p. 384, § 1; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2012, p. 831, § 1/HB 1071.)

The 2012 amendment, effective January 1, 2013, added the second sentence in paragraph (1); deleted “taxable” preceding “transaction” in paragraph (14); added paragraph (15); and redesignated former paragraphs (15) through (23) as present paragraphs (16) through (24), respectively.

Editor’s notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2003.’”

JUDICIAL DECISIONS

Tax not included in cost or price for sales or use tax purposes. — State cigarette tax is not an element of the “cost of the property sold” and is not, therefore, included in “gross sales” and “sales price” upon which the sales and use tax imposed

under Ga. L. 1951, p. 360 is calculated. *Blackmon v. Coastal Serv., Inc.*, 125 Ga. App. 28, 186 S.E.2d 441 (1971), *aff’d*, 229 Ga. 471, 192 S.E.2d 372 (1972).

Cited in *Carolina Tobacco Co. v. Baker*, 295 Ga. App. 115, 670 S.E.2d 811 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Cigarettes must be stamped even though stolen or lost. — Ga. L. 1955, p. 268, § 13 read in conjunction with Ga. L.

1955, p. 268, § 2 requires that cigarettes be stamped even though they are stolen or lost. 1963-65 Op. Att’y Gen. p. 779.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 521.	statute (26 USC (IRC 1954) chap. 31), 93 ALR2d 1120.
C.J.S. — 53 C.J.S., Licenses, § 55.	What constitutes manufacturing and
ALR. — What constitutes a sale “at retail” within federal retailers’ excise tax	who is a manufacturer under tax laws, 17 ALR3d 7.

48-11-2. Excise tax; rate on tobacco products; retail selling price before addition of tax; exemptions; collection and payment on first transaction; dealers or distributors; tax separately identified; collection.

(a) An excise tax, in addition to all other taxes of every kind imposed by law, is imposed upon the sale, receipt, purchase, possession, consumption, handling, distribution, or use of cigars, cigarettes, and loose or smokeless tobacco in this state at the following rates:

- (1) Little cigars: two and one-half mills each;
- (2) All cigars other than little cigars: 23 percent of the wholesale cost price, exclusive of any trade, cash, or other discounts or any promotion, advertising, display, or similar allowances;
- (3) Cigarettes: 37¢ per pack of 20 cigarettes and a like rate, pro rata, for other size packages; and
- (4) Loose or smokeless tobacco: 10 percent of the wholesale cost price, exclusive of any trade, cash, or other discounts or any promotion, advertising, display, or similar allowances.

(b) When the retail selling price is referred to in this chapter as the basis for computing the tax, it is intended to mean the ordinary retail selling price of the article to the consumer before adding the amount of the tax.

(c) The taxes imposed by this chapter are levied on the purchase or use of cigars, cigarettes, or loose or smokeless tobacco by the state or any department, institution, or agency of the state and by the political subdivisions of the state and their departments, institutions, and agencies. The taxes imposed by this chapter are not imposed on cigars, cigarettes, or loose or smokeless tobacco purchased exclusively for use by the patients at the Georgia War Veterans Home and the Georgia War Veterans Nursing Home.

(d) The taxes imposed by this chapter are not levied on cigars, cigarettes, or loose or smokeless tobacco the purchase or use of which this state is prohibited from taxing under the Constitution or statutes of the United States.

(e) The taxes imposed by this chapter shall be advanced and paid by the dealer or distributor licensed pursuant to this chapter to the

commissioner for deposit and distribution as provided in this chapter upon the first transaction within this state, whether or not the transaction involves the ultimate purchaser or consumer. The licensed dealer or distributor shall collect the tax on the first transaction within this state from the purchaser or consumer, and the purchaser or consumer shall pay the tax to the dealer or distributor. The dealer or distributor shall be responsible for the collection of the tax and the payment of the tax to the commissioner. Whenever cigars, cigarettes, or loose or smokeless tobacco is shipped from outside this state to anyone other than a distributor, the person receiving the cigars, cigarettes, or loose or smokeless tobacco shall be deemed to be a distributor and shall be responsible for the tax on the cigars, cigarettes, or loose or smokeless tobacco and the payment of the tax to the commissioner. No tobacco products shall be received in, sold in, or shipped into this state unless lawfully obtained from a person licensed pursuant to this chapter or from an importer with a valid permit issued pursuant to 26 U.S.C. Section 5712.

(f) The amount of taxes advanced and paid to the state as provided in this Code section shall be added to and collected as a part of the sales price of the cigars, cigarettes, or loose or smokeless tobacco sold or distributed. The amount of the tax shall be stated separately from the price of the cigars, cigarettes, or loose or smokeless tobacco.

(g) The cigars, cigarettes, and loose or smokeless tobacco tax imposed shall be collected only once upon the same cigars, cigarettes, or loose or smokeless tobacco. (Ga. L. 1955, p. 268, § 3; Ga. L. 1955, Ex. Sess., p. 48, § 1; Ga. L. 1964, p. 50, § 1; Ga. L. 1967, p. 563, §§ 2-4; Ga. L. 1971, p. 36, §§ 1, 2; Ga. L. 1971, p. 346, § 1; Code 1933, § 91A-5502, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 13; Ga. L. 1986, p. 468, § 1; Ga. L. 2003, p. 665, § 19; Ga. L. 2012, p. 831, § 2/HB 1071.)

The 2012 amendment, effective January 1, 2013, deleted “weighing not more than three pounds per thousand” following “Little cigars” in paragraph (a)(1); substituted “cigars other than little cigars” for “other cigars” in paragraph (a)(2); substituted “on” for “with respect to” in the first and second sentences of subsection (c) and in subsection (d); in subsection (e), in the first sentence, substituted “dealer or distributor licensed pursuant to this chapter” for “distributor”, deleted “taxable” preceding “transaction”, and substituted “this state” for “the state”, in the second and third sentences, substituted “dealer” for “seller”, in the second sentence, substituted “licensed dealer” for “seller”, inserted “on the first transaction

within this state”, and inserted a comma following “consumer” near the middle; substituted “outside this state” for “outside the state” in the fourth sentence and added the last sentence; and substituted “same cigars, cigarettes,” for “same cigarettes, cigars, little cigars,” in subsection (g).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, “; and” was substituted for a period at the end of paragraph (a)(3).

Editor’s notes. — Ga. L. 1986, p. 468, § 2, not codified by the General Assembly, provided that that Act would become effective July 1, 1986, and would apply to taxable events and transactions occurring on or after that date.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33,

36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1937, p. 83, § 1, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Tax does not violate commerce clause. — Cigarette tax laid not upon the privilege of receiving cigarettes in this state, but levied upon the privilege of retaining, keeping, holding, or possessing cigarettes for personal use, after the cigarettes have been received, acquired, or brought into this state, is not violative of the commerce clause, U.S. Const., Art. I, Sec. 8, Cl. 3. *Head v. Cigarette Sales Co.*, 188 Ga. 452, 4 S.E.2d 203 (1939) (decided under Ga. L. 1937, p. 83, § 1).

Tax is an excise tax, not ad valorem, and not unconstitutional for nonuniformity. — Tax imposed upon every person who received by means in this state, and who held or possessed for his or her own personal use in this state, or for the use of any member of their family, cigarettes which had been stamped as required, is an excise upon the privilege of holding or possessing such cigarettes for personal use, and not a direct or ad valorem tax upon such articles, and accordingly, does not violate Ga. Const. 1877, Art. VII, Sec. II, Para. I because it was not uniform with an ad valorem tax levied by the state upon tangible property. *Head v. Cigarette Sales Co.*, 188 Ga. 452, 4 S.E.2d 203 (1939) (decided under Ga. L. 1937, p. 83, § 1).

Different treatment of those holding stamped or unstamped cigarettes constitutional. — State does not create an unreasonable classification in violation of the uniformity clause, Ga. Const. 1877, Art. VII, Sec. II, Para. I, in levying a tax upon persons who hold or possess for

personal use unstamped cigarettes, while exempting those who hold or possess cigarettes for such purpose which have been stamped by a dealer as required by law. *Head v. Cigarette Sales Co.*, 188 Ga. 452, 4 S.E.2d 203 (1939) (decided under Ga. L. 1937, p. 83, § 1).

Tax is not part of cost of property sold for sales and use tax purposes. — If the imposition of taxes, such as those on cigarettes, falls upon the consumer or the incident of the sale by the retailer to the consumer they are not included as part of the retail sale price for calculating the sales and use tax. If, however, the tax is imposed at a time prior to the point of retail sale or other consumer transaction, it is an element of the cost of the property sold and must be included as part of the retail sale price for purposes of calculating the sales and use tax imposed by Ga. L. 1951, p. 360. The state cigarette tax is not an element of the "cost of the property sold" and is not, therefore, included in "gross sales" and "sales price" upon which the sales and use tax is calculated. *Blackmon v. Coastal Serv., Inc.*, 125 Ga. App. 28, 186 S.E.2d 441 (1971), *aff'd*, 229 Ga. 471, 192 S.E.2d 372 (1972).

Tax collected once, but imposed on every step in distribution and consumption. — Cigar and cigarette tax is an excise tax, to be collected only once, but nevertheless imposed upon each separate transaction and event in the process of distribution and consumption. *In re Jim Clay Tobacco Co.*, 355 F. Supp. 274 (N.D. Ga. 1973).

Cigar and cigarette tax is levied against the distributor. *In re Jim Clay Tobacco Co.*, 355 F. Supp. 274 (N.D. Ga. 1973).

There is no substantial independent significance in the distinction between the words "distributor" and

"taxpayer." In re Jim Clay Tobacco Co., 355 F. Supp. 274 (N.D. Ga. 1973).

Inability to collect from vendees does not absolve the distributor of the burden to pay the excise tax imposed by this section although the state, in the state's discretion, may pursue whatever entity appears most likely to yield results. In re Jim Clay Tobacco Co., 355 F. Supp. 274 (N.D. Ga. 1973).

Under this section, there is no doubt that the distributor's liability

is absolute, without regard to whether or not the distributor is able to pass on the economic burden to retail distributors and the ultimate retail consumers. If the cigarettes are destroyed in a fire before the ultimate retail sale, while in the hands of a retail distributor, or if the retail distributor becomes a bankrupt, the distributor's obligation is nevertheless fixed. In re Jim Clay Tobacco Co., 355 F. Supp. 274 (N.D. Ga. 1973).

OPINIONS OF THE ATTORNEY GENERAL

Department is not authorized to permit the National Guard to purchase or sell cigarettes or cigars with-

out the payment of the tobacco tax. 1963-65 Op. Att'y Gen. p. 242.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 23, 24, 521.

C.J.S. — 53 C.J.S., Licenses, § 55. 84 C.J.S., Taxation, § 162 et seq.

ALR. — Deductibility of other taxes or fees in computing excise or license taxes, 174 ALR 1263.

What constitutes a sale "at retail" within federal retailers' excise tax statute (26 USC (IRC 1954) chap 31), 93 ALR2d 1120.

48-11-3. Collection of tax by stamps; sale at discount to distributors; basis of discount percentage; alternate method of collection of tax on cigars; prohibition of sale or exchange of stamps with another distributor; redemption.

(a) Except as otherwise provided in this Code section, the taxes imposed by Code Section 48-11-2 shall be collected and paid through the use of stamps. The commissioner shall secure stamps of such design and materials as the commissioner deems appropriate to protect the revenue and shall sell the stamps to licensed distributors at a discount of not less than 2 percent and not more than 8 percent of the value of the stamps. The exact percentage of the discount shall be based on brackets according to the volume of cigars, cigarettes, and loose or smokeless tobacco handled by the distributor pursuant to regulations promulgated by the commissioner. The commissioner shall prescribe by regulation the condition, method, and manner in which stamps are to be affixed to containers of cigars, cigarettes, and loose or smokeless tobacco.

(b) The commissioner may prescribe by regulation an alternate method, in lieu of the sale of stamps, of collecting and paying the tax

imposed upon cigars and little cigars. The commissioner may also prescribe by regulation an alternate method, in lieu of the sale of stamps, of collecting and paying the tax imposed on loose or smokeless tobacco. Any such regulations shall be promulgated so that use of the alternate method will result in the same revenue to the state as the state would realize through the sale of stamps to the distributors.

(c) No distributor shall sell or exchange with another distributor any stamps issued pursuant to this chapter. The commissioner is authorized to redeem at cost price any stamps presented for redemption by a licensed distributor when the commissioner determines from physical inspection that no cigars, cigarettes, or loose or smokeless tobacco has been sold by the distributor under pretense of the tax imposed by this chapter having been paid through use of the stamps. (Ga. L. 1955, p. 268, § 4; Ga. L. 1955, Ex. Sess., p. 48, § 1A; Ga. L. 1960, p. 125, § 2; Ga. L. 1964, p. 50, § 2; Ga. L. 1967, p. 563, § 5; Code 1933, § 91A-5503, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 20.)

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

JUDICIAL DECISIONS

Purpose of using stamps for collection. — Use of stamps, affixed to each pack of cigarettes affords every party in the chain of distribution a ready method of determining the exact amount of the

tax paid by the distributor and which in turn is passed on to the ultimate retail consumer. In re Jim Clay Tobacco Co., 355 F. Supp. 274 (N.D. Ga. 1973).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 521, 541 et seq.

48-11-4. Licensing of persons engaged in tobacco business; initial and annual fees; suspension and revocation; registration and inspection of vending machines; bond by distributor; jurisdiction; licensing of promotional activities.

(a) No person shall engage in or conduct the business of manufacturing, importing, brokering, purchasing, selling, consigning, vending, dealing in, shipping, receiving, or distributing cigars, cigarettes, or loose or smokeless tobacco in this state without first obtaining a license from the commissioner.

(b) All licenses shall be issued by the commissioner, who shall make rules and regulations with respect to applications for and issuance of the licenses and for other purposes of enforcing this chapter. The

commissioner may refuse to issue any license under this chapter when the commissioner has reasonable cause to believe that the applicant has willfully withheld information requested of the applicant or required by the regulations to be provided or reported or when the commissioner has reasonable cause to believe that the information submitted in any application or report is false or misleading and is not given in good faith.

(c)(1) The annual renewal fee for a manufacturer's, importer's, distributor's, or dealer's license shall be \$10.00. There shall also be a first year registration fee of \$250.00 for a person commencing business as a manufacturer, importer, or distributor. All renewal applications shall be filed at least 30 days in advance of the expiration date shown on the license.

(2) Each license, except a dealer's license, shall begin on July 1 and end on June 30 of the next succeeding year. The prescribed fee shall accompany every application for a license and shall apply for any portion of the annual period.

(3) Each dealer's license shall be valid for 12 months beginning on the date of issue for the initial license, and the first day of the month of issue for subsequent licenses, and shall expire on the last day of the month preceding the month in which the initial license was issued. Any dealer licensed under the provisions of this Code section who is also licensed under Chapter 2 of Title 3 to sell alcoholic beverages may, upon written request to the commissioner, arrange to have both licenses renewed on the same date each year. Any dealer that follows the proper procedure for a renewal of his or her license, including filing the application for renewal at least 30 days in advance of the expiration date of his or her existing license, shall be allowed to continue operating as a dealer under the existing license until the commissioner has issued the new license or denied the application for renewal.

(4) Each manufacturer's, importer's, distributor's, or dealer's license shall be subject to suspension or revocation for violation of any of the provisions of this chapter or of the rules and regulations made pursuant to this chapter. A separate license shall be required for each place of business. No person shall hold a distributor's license and a dealer's license at the same time.

(d) The commissioner may make rules and regulations governing the sale of cigars, cigarettes, loose or smokeless tobacco, and other tobacco products in vending machines. The commissioner shall require annually a special registration of each vending machine for any operation in this state and charge a license fee for the registration in the amount of \$10.00 for each machine. The annual registration shall indicate the

location of the vending machine. No vending machine shall be purchased or transported into this state for use in this state when the vending machine is not so designed as to permit inspection without opening the machine for the purpose of determining that all cigars, cigarettes, loose or smokeless tobacco, and other tobacco products contained in the machine bear the tax stamp required under this chapter.

(e) The manufacturer's, importer's, distributor's, or dealer's license shall be exhibited in the place of business for which it is issued in the manner prescribed by the commissioner. The commissioner shall require each licensed manufacturer, importer, or distributor to file with the commissioner a bond in an amount of not less than \$1,000.00 to guarantee the proper performance of the manufacturer's, importer's, or distributor's duties and the discharge of the manufacturer's, importer's, or distributor's liabilities under this chapter. The bond shall run concurrently with the manufacturer's, importer's, or distributor's license but shall remain in full force and effect for a period of one year after the expiration or revocation of the manufacturer's, importer's, or distributor's license unless the commissioner certifies that all obligations due the state arising under this chapter have been paid.

(f) The jurisdiction of the commissioner in the administration of this chapter shall extend to every person using or consuming cigars, cigarettes, or loose or smokeless tobacco in this state and to every person dealing in cigars, cigarettes, or loose or smokeless tobacco in any way for business purposes and maintaining a place of business in this state. For the purpose of this chapter, the maintaining of an office, store, plant, warehouse, stock of goods, or regular sales or promotional activity, whether carried on automatically or by salespersons or other representatives, shall constitute, among other activities, the maintaining of a place of business. For the purpose of enforcement of this chapter and the rules and regulations promulgated under this chapter, notwithstanding any other provision of law, the commissioner or his or her duly appointed hearing officer is granted authority to conduct hearings which shall at all times be exercised in conformity with rules and regulations promulgated by the commissioner and consistent with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(g) The commissioner may provide for the licensing of promotional activities, not including the sale of cigars, cigarettes, or loose or smokeless tobacco, carried on by the manufacturer. The fee for any such license shall be \$10.00 annually. (Ga. L. 1955, p. 268, § 5; Ga. L. 1960, p. 125, § 3; Code 1933, § 91A-5504, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 37; Ga. L. 1993, p. 343, § 6; Ga. L. 2003, p. 665, § 21; Ga. L. 2004, p. 384, § 2; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2012, p. 831, § 3/HB 1071; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2012 amendment, effective January 1, 2013, inserted “shipping, receiving,” near the middle of subsection (a); substituted the present provisions of subsection (c) for the former provisions, which read: “The fee for a manufacturer’s, importer’s, or distributor’s license shall be \$50.00 annually, except that for a person commencing business as a manufacturer, importer, or distributor for the first time the first year’s fee shall be \$250.00. Each dealer shall have a permanent license issued by the commissioner free of charge. Each license, except a dealer’s license, shall begin on July 1 and end on June 30 of the next succeeding year. The prescribed fee shall accompany every application for a license and shall apply for any portion of the annual period. Each manufacturer’s, importer’s, distributor’s, or dealer’s license shall be subject to suspension or revocation for violation of any of the provisions of this chapter or of the rules and regulations made pursuant to this chapter. A separate license shall be

required for each place of business. No person shall hold a distributor’s license and a dealer’s license at the same time.”; in subsection (d), substituted “\$10.00” for “\$1.00” in the second sentence, and inserted “all” in the last sentence; in the last sentence of subsection (f), substituted “under this chapter” for “hereunder”, and inserted “with rules and regulations promulgated by the commissioner and consistent” near the end.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, in subsection (c), designated the introductory language as present paragraph (c)(1) and revised punctuation, therein, and redesignated former paragraphs (c)(1) through (c)(3) as present paragraphs (c)(2) through (c)(4), respectively.

Editor’s notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2003.’”

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 6, 7, 9, 45.

C.J.S. — 53 C.J.S., Licenses, §§ 1 et seq., 57, 58.

ALR. — Validity, construction, and application of statutes or ordinances prohib-

iting or regulating automatic vending machines, 111 ALR 755; 151 ALR 1195.

What constitutes manufacturing and who is a manufacturer under tax laws, 17 ALR3d 7.

48-11-5. Licensing of nonresident distributors; authorized use of stamps or metering machine; bond; amount; examination of records; service on agent; applicability of chapter to nonresident distributors; reports of shipments.

(a)(1) If the commissioner finds that the collection of the tax imposed by this chapter would be facilitated by such action, the commissioner may authorize any person residing or located outside this state who is engaged in the business of manufacturing cigars, cigarettes, or loose or smokeless tobacco or any person residing or located outside this state who ships cigars, cigarettes, or loose or smokeless tobacco into this state for sale to licensed dealers in this state, to be licensed as a distributor and, after the person complies with the commissioner’s requirements, to affix or cause to be affixed the stamps required by this chapter on behalf of the purchasers of the cigars, cigarettes, or loose or smokeless tobacco who would otherwise be taxable for the

cigars, cigarettes, and loose or smokeless tobacco. The commissioner may sell tax stamps to an authorized person or may authorize the use of a metering machine by the person as provided in Code Section 48-11-3.

(2) The commissioner shall require a bond of a nonresident distributor satisfactory to the commissioner and in an amount of not less than \$1,000.00, conditioned upon the payment of the tax and compliance with any other requirements specified by the commissioner. As a condition of authorization as provided in this Code section, a nonresident distributor shall agree to submit the distributor's books, accounts, and records for examination by the commissioner or the commissioner's duly authorized agent during reasonable business hours and shall appoint in writing an agent who resides in this state for the purpose of service. Service upon an agent shall be sufficient service upon the nonresident distributor and made by leaving a duly attested copy of the process with the agent. When legal process against any nonresident distributor is served upon the agent, the agent shall notify the nonresident distributor in the manner specified in Code Section 40-12-2.

(3) Upon the grant of authorization as provided in this subsection and except as may otherwise be determined by the commissioner, a nonresident distributor shall become a licensed distributor within the meaning of this chapter and shall be subject to all provisions of this chapter applicable to licensed distributors.

(b) Every nonresident manufacturer, importer, or distributor of cigars, cigarettes, or loose or smokeless tobacco making shipments of cigars, cigarettes, or loose or smokeless tobacco by common carrier or otherwise for their own account or for the account of others to distributors or dealers of cigars, cigarettes, or loose or smokeless tobacco located within this state shall make reports of the shipments when and as required by rules and regulations of the commissioner. (Ga. L. 1955, p. 268, § 6; Ga. L. 1960, p. 125, § 4; Code 1933, § 91A-5505, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 2003, p. 665, § 22; Ga. L. 2004, p. 384, § 3.)

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, and may be cited as the 'State and Local Tax Revision Act of 2003.' provides that: "This Act shall be known

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 31, 55. **C.J.S.** — 53 C.J.S., Licenses, § 67 et seq.

48-11-6. Suspension, refusal of renewal, and revocation of licenses; notice; procedures for hearings; appeals; effect of suspension or refusal to renew on other activities by commissioner.

The commissioner may suspend or refuse to renew a license issued to any person under this chapter for violation of any provision of this chapter or of any rule or regulation of the commissioner made pursuant to this chapter. After notice and opportunity for hearing, the commissioner may revoke a license issued to any person under this chapter for violation of any provision of this chapter or of any rule or regulation of the commissioner made pursuant to this chapter. Any person aggrieved by the suspension of or refusal to renew his license may apply to the commissioner for a hearing as provided in subsection (a) of Code Section 48-11-18; and any person aggrieved by the action of the commissioner in revoking or refusing to renew his license after hearing may further appeal to the courts as provided in subsection (b) of Code Section 48-11-18. No legal proceedings or other action by the commissioner shall be barred or abated by the suspension, revocation, or expiration of any license issued under this chapter. (Ga. L. 1955, p. 268, § 7; Code 1933, § 91A-5506, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 56 et seq.

C.J.S. — 53 C.J.S., Licenses, § 80 et seq.

48-11-7. Execution of bonds by distributor; surety.

Each bond required to be filed pursuant to this chapter shall be executed by the distributor as principal and, as surety, by a corporation authorized to engage in business as a surety company in this state. (Ga. L. 1955, p. 268, § 8; Code 1933, § 91A-5507, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, § 67 et seq.

48-11-8. Prohibition of sale or possession of unstamped tobacco products; distributors to affix stamps or otherwise pay tax; payment of tax only once; reports.

(a)(1) No person shall sell, offer for sale, or possess with intent to sell any cigarettes in this state when the cigarette container does not bear the tax stamps required by Code Section 48-11-3.

(2) No person shall sell, offer for sale, or possess with intent to sell in this state any cigars or little cigars upon which the tax has not been paid under the alternate method of collecting the taxes provided in Code Section 48-11-3 or which do not bear tax stamps.

(3) No person shall sell, offer for sale, or possess with intent to sell any loose or smokeless tobacco in this state when the loose or smokeless tobacco container does not bear the tax stamps required by Code Section 48-11-3 or upon which the tax has not been paid under the alternate method of collecting the tax provided under Code Section 48-11-3.

(4) No person shall sell, offer for sale, or possess with intent to sell cigarettes as prohibited by Code Section 10-13A-5.

(b) Each distributor at the location for which such distributor's license is issued and in the manner specified by the commissioner shall affix the stamps required by this Code section to each individual package of cigarettes sold or distributed by such distributor, except as prohibited by Code Section 10-13A-5. Each distributor shall comply with the commissioner's regulations for the payment of the tax on cigars or loose or smokeless tobacco as provided in Code Section 48-11-3 or shall affix to each container of cigars or loose or smokeless tobacco sold by such distributor or from which such distributor sells cigars or loose or smokeless tobacco the stamps required by this chapter. The stamps may be affixed or the tax under the alternate method may be paid by a distributor at any time before the cigars, cigarettes, or loose or smokeless tobacco is transferred out of such distributor's possession.

(c) It is the intent of this chapter that the tax imposed by this chapter be paid only once and that, if the distributor acquires stamped cigarettes, tax-paid cigars, stamped cigars, stamped loose or smokeless tobacco, or tax-paid loose or smokeless tobacco, such distributor is not required to affix additional stamps or provide other evidence of payment of the tax.

(d) Every dealer who comes into possession of cigars, cigarettes, or loose or smokeless tobacco not bearing proper tax stamps or other evidence of the tax imposed by this chapter shall report the cigars, cigarettes, or loose or smokeless tobacco to the commissioner prior to displaying, selling, using, or otherwise disposing of the cigars, cigarettes, and loose or smokeless tobacco. After a report, the commissioner shall authorize a licensed distributor to affix the proper stamps to the cigars, cigarettes, and loose or smokeless tobacco or, in the case of cigars or loose or smokeless tobacco, authorize the dealer to remit the tax by the alternate method promulgated by the commissioner in accordance with Code Section 48-11-3. A licensed distributor shall affix the stamps or comply with the alternate regulations when presented a permit for

such action issued by the commissioner. A licensed distributor shall stamp cigarettes or comply with the alternate method provided in this chapter with respect to cigars or loose or smokeless tobacco, other than such distributor's own, only when authorized by the permit issued by the commissioner.

(e) No wholesale or retail distributor or wholesale or retail dealer shall accept deliveries of unstamped cigarettes or loose or smokeless tobacco or nontax-paid cigars or loose or smokeless tobacco which is shipped to such distributor or acquired by such distributor at any place within the state except as authorized and provided in this Code section. All cigars, cigarettes, and loose or smokeless tobacco shall be examined by the distributor or dealer on receipt, and the distributor shall immediately report the cigars, cigarettes, or loose or smokeless tobacco to the commissioner as provided in subsection (d) of this Code section.

(f) The commissioner may prescribe the charges which may be made by a distributor to any person for the services of the distributor as provided in this chapter in affixing the tax stamps to each individual package of cigarettes or loose or smokeless tobacco and may prescribe the charges which may be made by a distributor in complying with the commissioner's alternate regulations for the collection of the tax on cigars and little cigars or loose or smokeless tobacco.

(g) This Code section shall not apply to unstamped cigars and little cigars or loose or smokeless tobacco upon which the tax has been paid in accordance with the alternate regulations promulgated by the commissioner under Code Section 48-11-3. (Ga. L. 1955, p. 268, § 9; Ga. L. 1960, p. 125, §§ 5, 6; Ga. L. 1967, p. 563, § 6; Ga. L. 1969, p. 710, § 1; Code 1933, § 91A-5508, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 23; Ga. L. 2003, p. 829, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, paragraph (a)(3) as added by Ga. L. 2003, p. 829, § 2 was redesignated as paragraph (a)(4), and "or her" and "or she" was deleted wherever added in subsection (b).

Editor's notes. — Ga. L. 2003, p. 665,

§ 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 51 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 521.

48-11-9. Seizure as contraband of unstamped tobacco products; exceptions; sale at public auction; procedure; disposition of proceeds; hearing; bond; contraband vending machines.

(a)(1) Any cigars, cigarettes, or loose or smokeless tobacco found at any place in this state without stamps affixed to them as required by this chapter and any cigarettes seized pursuant to subsection (b) of Code Section 10-13A-8 are declared to be contraband articles and may be seized by the commissioner, the commissioner's agents or employees, or any peace officer of this state when directed by the commissioner to do so.

(2) Paragraph (1) of this subsection shall not apply when:

(A) The tax has been paid on the unstamped cigars and little cigars or loose or smokeless tobacco in accordance with the commissioner's regulations promulgated pursuant to Code Section 48-11-3;

(B) The cigars, cigarettes, or loose or smokeless tobacco is in the possession of a licensed distributor;

(C) The cigars, cigarettes, or loose or smokeless tobacco is in course of transit from outside the state and is consigned to a licensed distributor;

(D) The cigars, cigarettes, or loose or smokeless tobacco is in the possession of a transporter who is in compliance with Code Section 48-11-22; or

(E) The cigars, cigarettes, or loose or smokeless tobacco is in the possession of a registered taxpayer as defined in Code Section 48-11-14 and the time for making the report required by Code Section 48-11-14 has not expired.

(3) This subsection shall not be construed to require the commissioner to confiscate unstamped or nontax-paid cigars, cigarettes, and loose or smokeless tobacco or other property when the commissioner has reason to believe that the owner of the cigars, cigarettes, loose or smokeless tobacco, or property is not willfully or intentionally evading the tax imposed by this chapter.

(b) Any cigars, cigarettes, loose or smokeless tobacco, or other property seized pursuant to this chapter may be offered for sale by the commissioner, at the commissioner's discretion, at public auction to the highest bidder after advertisement as provided in this Code section. The commissioner shall deliver to the Office of the State Treasurer the proceeds of any sale made under this Code section. Before delivering any cigars, cigarettes, or loose or smokeless tobacco sold to a purchaser

at the sale, the commissioner shall require the purchaser to affix to the packages the amount of stamps required by this chapter or to comply with the commissioner's alternate method. The seizure and sale of any cigars, cigarettes, loose or smokeless tobacco, or property pursuant to this chapter shall not relieve any person from a fine, imprisonment, or other penalty for violation of this chapter.

(c) When any cigars, cigarettes, loose or smokeless tobacco, or other property has been seized pursuant to this chapter, the commissioner, at the commissioner's discretion, may advertise it for sale in a newspaper published or having a circulation in the place in which the seizure occurred, at least five days before the sale. Any person claiming an interest in the cigars, cigarettes, loose or smokeless tobacco, or other property may make written application to the commissioner for a hearing. The application shall state the person's interest in the cigars, cigarettes, loose or smokeless tobacco, or other property and such person's reasons why the cigars, cigarettes, loose or smokeless tobacco, or other property should not be forfeited. Further proceedings on the application for hearing shall be taken as provided in subsection (a) of Code Section 48-11-18. No sale of any cigars, cigarettes, loose or smokeless tobacco, or property seized pursuant to this chapter shall be made while an application for a hearing is pending before the commissioner. The pendency of an appeal under subsection (b) of Code Section 48-11-18 shall not prevent the sale unless the appellant posts a satisfactory bond with surety in an amount double the estimated value of the cigars, cigarettes, loose or smokeless tobacco, or other property and conditioned upon the successful termination of the appeal.

(d) Any vending machine containing or dispensing any cigarettes or loose or smokeless tobacco which does not bear the tax stamps required under this chapter or containing or dispensing any cigars or loose or smokeless tobacco upon which the tax has not been paid either through the purchase of stamps or the alternate procedure provided by the commissioner as required under this chapter shall be a contraband article. The commissioner may seize any such machine and deal with it in the same manner as provided by law for the seizure and sale of unstamped cigarettes or loose or smokeless tobacco and nontax-paid cigars or loose or smokeless tobacco. (Ga. L. 1955, p. 268, § 10; Ga. L. 1960, p. 125, § 7; Ga. L. 1967, p. 563, §§ 7, 8; Ga. L. 1969, p. 710, § 2; Code 1933, § 91A-5509, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2002, p. 415, § 48; Ga. L. 2003, p. 665, § 24; Ga. L. 2003, p. 829, § 3; Ga. L. 2010, p. 863, § 2/SB 296.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, "or her" as added by Ga. L. 2003, p. 829, § 3 was deleted in paragraph (a)(1).

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local

Tax Revision Act of 2003.’”

Administrative rules and regulations. — Loose tobacco, smokeless tobacco, cigar or cigarette vending machines, vending machines, Official Compilation of the Rules and Regulations

of the State of Georgia, Department of Revenue, Alcohol and Tobacco Tax Division, § 560-8-5-.02.

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 51 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 521.

C.J.S. — 79 C.J.S., Searches and Seizures, §§ 1 et seq., 128 et seq., 217 et seq.

48-11-10. Monthly reports of licensed distributors; contents; authority to require reports from common carriers, warehousemen, and others; penalty for failure to file timely report.

(a) Every licensed distributor shall file with the commissioner, on or before the tenth day of each month, a report in the form prescribed by the commissioner disclosing:

(1) The quantity of cigars, cigarettes, or loose or smokeless tobacco on hand on the first and last days of the calendar month immediately preceding the month in which the report is filed;

(2) Information required by the commissioner concerning the amount of stamps purchased, used, and on hand during the report period; and

(3) Information otherwise required by the commissioner for the report period.

(b) The commissioner may require other reports as the commissioner deems necessary for the proper administration of this chapter, including, but not limited to, reports from common carriers and warehousemen with respect to cigars, cigarettes, and loose or smokeless tobacco delivered to or stored at any point in this state.

(c) Any person who fails to file any report when due shall forfeit as a penalty for each day after the due date until the report is filed the sum of \$25.00, to be collected in the manner provided in subsection (c) of Code Section 48-11-24 for the collection of penalties. (Ga. L. 1955, p. 268, § 11; Ga. L. 1967, p. 563, § 9; Ga. L. 1969, p. 710, § 3; Code 1933, § 91A-5510, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 25; Ga. L. 2012, p. 831, § 4/HB 1071.)

The 2012 amendment, effective January 1, 2013, deleted “and” following “commissioner” in the introductory paragraph of subsection (a); and substituted “\$25.00” for “\$1.00” in subsection (c).

Editor’s notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2003.’”

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, § 121 et seq.

48-11-11. Records of distributors and dealers; stock of tobacco products; inspection by commissioner and agents; inspection of records of transportation companies, carriers, and warehouses.

(a) Each distributor and each dealer shall keep complete and accurate records of all cigars, cigarettes, and loose or smokeless tobacco manufactured, produced, purchased, and sold. The original records or a complete and legible photocopy or electronic image shall be safely preserved for three years in an appropriate manner to ensure permanency and accessibility for inspection by the commissioner and the commissioner's authorized agents. The commissioner and the commissioner's authorized agents may examine the books, papers, and records of any distributor or dealer in this state for the purpose of determining whether the tax imposed by this chapter has been fully paid and, for the purpose of determining whether the provisions of this chapter are properly observed, may investigate and examine the stock of cigars, cigarettes, or loose or smokeless tobacco in or upon any premises, including, but not limited to, public and private warehouses where the cigars, cigarettes, or loose or smokeless tobacco is possessed, stored, or sold. Invoices sufficient to cover current inventory at a licensed location shall be maintained at that licensed location and made available for immediate inspection. All other records may be kept at a locality other than the licensed location and shall be provided for inspection within two business days after receipt of notification from the commissioner or an authorized agent of the commissioner to make such records available.

(b) The commissioner and his or her authorized agents may examine the books, papers, and records of any transportation company, any common, contract, or private carrier, and any public or private warehouse for the purpose of determining whether the provisions of this chapter are properly observed. (Ga. L. 1955, p. 268, § 12; Code 1933, § 91A-5511, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 26; Ga. L. 2012, p. 831, § 5/HB 1071.)

The 2012 amendment, effective January 1, 2013, in subsection (a), substituted "The original records or a complete and legible photocopy or electronic image" for "The records shall be of the kind and in the form prescribed by the commissioner and" in the second sentence, added a comma following "premises" in the third

sentence, and added the fourth and fifth sentences; and inserted "or her" in subsection (b).

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

48-11-12. Assessment of deficiencies and penalties for incorrect reports, nonpayment of tax, or purchase of insufficient stamps; assumption of illegal sale absent evidence to contrary; penalty for deficiency due to fraud.

(a)(1) The commissioner shall assess a deficiency and may assess a penalty of 10 percent of the deficiency if, after an examination of the invoices, books, and records of a licensed distributor or dealer or of any other information obtained by the commissioner or the commissioner's authorized agents, the commissioner determines that:

(A) The report of the licensed distributor or licensed dealer is incorrect;

(B) The licensed distributor or dealer has not paid the tax in accordance with the alternate regulations promulgated by the commissioner under Code Section 48-11-3; or

(C) The licensed distributor or dealer has not purchased sufficient stamps to cover such licensed distributor or dealer's receipts for sales or other disposition of unstamped cigarettes or loose or smokeless tobacco and nontax-paid cigars or loose or smokeless tobacco.

(2) In any case where a licensed distributor or dealer cannot produce evidence of sufficient stamps purchased or other payment of the tax to cover the receipt of unstamped cigarettes or loose or smokeless tobacco or nontax-paid cigars or loose or smokeless tobacco, it shall be assumed that the cigars, cigarettes, and loose or smokeless tobacco were sold without having either the proper stamps affixed or the tax paid on unstamped cigars or loose or smokeless tobacco.

(b) If the commissioner determines that the deficiency or any part of the deficiency is due to a fraudulent intent to evade the tax, a penalty of 50 percent of the deficiency shall be added to the amount due. (Ga. L. 1955, p. 268, § 13; Ga. L. 1967, p. 563, § 10; Code 1933, § 91A-5512, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 27; Ga. L. 2009, p. 8, § 48/SB 46.)

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known

and may be cited as the 'State and Local Tax Revision Act of 2003.'"

JUDICIAL DECISIONS

Inability to collect from vendees does not absolve the distributor of the burden to pay the excise tax im-

posed on cigars and cigarettes by Ga. L. 1955, p. 268; although the state, in the state's discretion, may pursue whatever

entity appears most likely to yield results. In re Jim Clay Tobacco Co., 355 F. Supp. 274 (N.D. Ga. 1973).

OPINIONS OF THE ATTORNEY GENERAL

Former Code 1933, § 92-2212 (see O.C.G.A. § 48-11-1) read in conjunction with Ga. L. 1955, p. 268, § 2 required that cigarettes be stamped even though the cigarettes were stolen or lost. 1963-65 Op. Att’y Gen. p. 779.

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, § 121 et seq.

48-11-13. Tax on persons having tobacco products on which tax under Code Section 48-11-2 not paid; rate; exemptions.

(a) There is imposed a tax on every person for the privilege of using, consuming, or storing cigars, cigarettes, and loose or smokeless tobacco in this state on which the tax imposed by Code Section 48-11-2 has not been paid. The tax shall be measured by and graduated in accordance with the volume of cigars, cigarettes, and loose or smokeless tobacco used, consumed, or stored as set forth in Code Section 48-11-2.

(b) This Code section shall not apply to:

(1) Cigars, cigarettes, or loose or smokeless tobacco in the hands of a licensed distributor or dealer;

(2) Cigars, cigarettes, or loose or smokeless tobacco in the possession of a carrier complying with Code Section 48-11-22;

(3) Cigars, cigarettes, or loose or smokeless tobacco stored in a public warehouse;

(4) Cigarettes or little cigars in an amount not exceeding 200 cigarettes or little cigars which have been brought into the state on the person;

(5) Cigars in an amount not exceeding 20 cigars which have been brought into the state on the person; or

(6) Loose or smokeless tobacco in an amount not exceeding six containers which has been brought into the state on the person. (Ga. L. 1955, p. 268, § 14; Code 1933, § 91A-5513, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 28; Ga. L. 2012, p. 831, § 6/HB 1071.)

The 2012 amendment, effective January 1, 2013, twice inserted “or little cigars” in paragraph (b)(4).

Editor’s notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: “This Act shall be known

and may be cited as the 'State and Local Tax Revision Act of 2003.'”

48-11-14. Registration, reports, and tax payments of persons acquiring tobacco products subject to tax under Code Section 48-11-13; assessment of tax due from person failing to file or filing incorrect report; hearing; penalties.

(a) Before any person acquires cigars, cigarettes, or loose or smokeless tobacco subject to the tax imposed by Code Section 48-11-13, such person shall register with the commissioner as a responsible taxpayer subject to the obligation of maintaining records and making reports in the form prescribed by the commissioner. The report shall be made on or before the tenth day of the month following the month in which the cigars, cigarettes, or loose or smokeless tobacco was acquired and shall be accompanied by the amount of tax due.

(b) If any person subject to the tax imposed by Code Section 48-11-13 fails to make the required report or makes an incorrect report, the commissioner shall assess the correct amount of tax due from that person from the best information available to him. A copy of the assessment shall be furnished the person by registered or certified mail or statutory overnight delivery, return receipt requested, or by personal service. Any person aggrieved by any assessment pursuant to this Code section may request a hearing in the manner provided in subsection (a) of Code Section 48-11-18.

(c) Every person subject to the tax imposed by Code Section 48-11-13 who fails to register with the commissioner as a responsible taxpayer, who fails to make a report within the time specified, or who fails to remit the tax within the time specified may be required to pay a penalty of not less than \$25.00 nor more than \$250.00 in addition to the tax and any other penalties imposed by law and found due by the commissioner. The commissioner may proceed to collect the tax and penalty in the manner provided in subsection (c) of Code Section 48-11-24.

(d) Except as otherwise provided in this Code section, the sanctions and penalties set forth in Code Sections 48-11-15, 48-11-17, 48-11-18, and 48-11-20 through 48-11-24 and in Code Sections 48-7-2 and 48-13-38 shall be imposed where applicable for any violations of this chapter by consumers. (Ga. L. 1955, p. 268, §§ 15, 17, 18; Ga. L. 1969, p. 710, § 4; Code 1933, §§ 91A-5514, 91A-5515, 91A-5516, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1993, p. 1292, § 5; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1074, § 5; Ga. L. 2003, p. 665, § 29.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that that Act shall apply with respect to notices delivered on or after July 1, 2000.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides that: "this Act shall not abate any prosecution, punishment, penalty, administrative proceed-

ings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act."

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

JUDICIAL DECISIONS

Inability to collect from vendees does not absolve the distributor of the burden to pay the excise tax imposed on cigars and cigarettes by state statutes; although the state, in the state's

discretion, may pursue whatever entity appears most likely to yield results. In re Jim Clay Tobacco Co., 355 F. Supp. 274 (N.D. Ga. 1973).

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, § 121 et seq.

ALR. — Liability for license fee or oc-

cupation tax of one who has conducted business without required license or payment, 5 ALR 1312; 107 ALR 652.

48-11-15. Procedure for refund of taxes, cost price of affixed stamps, and tax on tobacco products unfit for sale, use, or consumption and destroyed or exported.

The Office of the State Treasurer is authorized to pay, on the order of the commissioner, claims for refunds of cigar, cigarette, or loose or smokeless tobacco taxes found by the commissioner or the courts to be due any distributor, dealer, or taxpayer. The commissioner, upon proof satisfactory to the commissioner and in accordance with regulations promulgated by the commissioner, shall refund the cost price of stamps affixed to any package of cigars, cigarettes, or loose or smokeless tobacco or shall refund the tax paid on cigars or loose or smokeless tobacco under the alternate method when the cigars, cigarettes, or loose or smokeless tobacco has become unfit for use, consumption, or sale and has been destroyed or shipped out of the state. (Ga. L. 1955, p. 268, § 21; Ga. L. 1964, p. 50, § 3; Ga. L. 1967, p. 563, § 11; Code 1933, § 91A-5518, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2003, p. 665, § 30; Ga. L. 2010, p. 863, § 2/SB 296.)

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews. — For note as to the voluntary payment doctrine in Georgia, see 16 Ga. L. Rev. 893 (1982).

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, § 72.

ALR. — Right to interest on tax refund or credit, 112 ALR 1183; 88 ALR2d 823.

When right to refund of state or local

taxes accrues, within statute limiting time for applying for refund, 46 ALR2d 1350.

48-11-16. Purchase of tax stamps on account by licensed distributors; permit; time of payment; bond; cancellation of permit without notice for failure or refusal to comply with Code section; annual payment of any liability outstanding.

(a) The commissioner may permit licensed distributors to purchase tax stamps from the department on account. Permits may be granted only to licensed distributors who post bonds with the commissioner in amounts sufficient in the opinion of the commissioner to secure payment for stamps delivered on account. Tax stamps purchased by licensed distributors shall be paid for in full on or before the twentieth day of the month next succeeding the purchase. The bond provided in this Code section shall be secured by cash which shall bear no interest, by negotiable securities approved by the Office of the State Treasurer, or by a surety bond executed by a surety company licensed to do business in this state and approved by the commissioner.

(b) The commissioner may cancel without notice any permit issued under this Code section if the licensed distributor fails or refuses to comply with the requirements of this Code section or with the rules and regulations adopted under authority of this Code section.

(c) On or before June 30 of each fiscal year, the licensed distributor shall pay in its entirety any liability for the purchase of tax stamps due at that time. (Ga. L. 1970, p. 146, § 1; Code 1933, § 91A-5525, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

48-11-17. Amount of unpaid tax as lien against property of violators; seizure and sale; recording of lien.

The amount of any unpaid tax shall be a lien against the property of any distributor or dealer who sells cigars, cigarettes, or loose or smokeless tobacco without collecting the tax and against the property of any person using or consuming cigars, cigarettes, or loose or smokeless tobacco without proper stamps affixed to the cigars, cigarettes, or loose or smokeless tobacco or without the tax paid on the cigars or loose or smokeless tobacco as otherwise provided in this chapter. The commissioner or the commissioner's authorized agents are authorized to seize the property of a delinquent distributor, dealer, or taxpayer and sell it

as provided by law to satisfy the claim for taxes due under this chapter; or the commissioner may record the commissioner's lien specifying and describing the property against which the lien is effective, and the lien shall be good as against any other person until the claim for taxes is satisfied. (Ga. L. 1955, p. 268, § 24; Ga. L. 1964, p. 50, § 4; Ga. L. 1967, p. 563, § 15; Code 1933, § 91A-5523, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 31.)

Cross references. — Liens generally, § 44-14-320 et seq.

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly,

provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, § 104.

48-11-18. Procedure for hearing by persons aggrieved by action of commissioner; initiation of hearings by commissioner; production of evidence; appeals; bond; grounds for not sustaining commissioner's action; costs.

(a) Any person aggrieved by any action of the commissioner or the commissioner's authorized agent may apply to the commissioner, in writing within ten days after the notice of the action is delivered or mailed to the commissioner, for a hearing. The application shall set forth the reasons why the hearing should be granted and the manner of relief sought. The commissioner shall notify the applicant of the time and place fixed for the hearing. After the hearing, the commissioner may make an order as may appear to the commissioner to be just and lawful and shall furnish a copy of the order to the applicant. The commissioner at any time by notice in writing may order a hearing on the commissioner's own initiative and require the taxpayer or any other person whom the commissioner believes to be in possession of information concerning any manufacture, importation, use, consumption, storage, or sale of cigars, cigarettes, or loose or smokeless tobacco which has escaped taxation to appear before the commissioner or the commissioner's duly authorized agent with any specific books of account, papers, or other documents for examination under oath relative to the information.

(b) Any person aggrieved because of any final action or decision of the commissioner, after hearing, may appeal from the decision to the superior court of the county in which the appellant resides. The appeal shall be returnable at the same time and shall be served and returned in the same manner as required in the case of a summons in a civil action. The authority issuing the citation shall take from the appellant

a bond of recognizance to the state, with surety, conditioned to prosecute the appeal and to effect and comply with the orders and decrees of the court. The action of the commissioner shall be sustained unless the court finds that the commissioner misinterpreted this chapter or that there is no evidence to support the commissioner's action. If the commissioner's action is not sustained, the court may grant equitable relief to the appellant. Upon all appeals which are denied, costs may be taxed against the appellant at the discretion of the court. No costs of any appeal shall be taxed against the state. (Ga. L. 1955, p. 268, §§ 19, 20; Code 1933, § 91A-5517, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 32; Ga. L. 2012, p. 831, § 7/HB 1071.)

The 2012 amendment, effective January 1, 2013, in subsection (b), inserted "final" in the first sentence, and in the fourth sentence, substituted "the commissioner" for "he" and substituted "the commissioner's" for "his".

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, § 109 et seq.

48-11-19. Powers and duties of special agents and enforcement officers of department; bond; duties following arrests; retention of weapon and badge upon retirement.

(a) Each person appointed by the commissioner as a special agent or enforcement officer of the department for the enforcement of the laws of this state with respect to the manufacture, transportation, distribution, sale, possession, and taxation of cigars, cigarettes, little cigars, and loose or smokeless tobacco shall have the authority throughout the state to:

(1) Obtain and execute warrants for arrest of persons charged with violations of such laws;

(2) Obtain and execute search warrants in the enforcement of such laws;

(3) Arrest without warrant any person violating such laws in the officer's presence or within such officer's immediate knowledge when there is likely to be a failure of enforcement of such laws for want of a judicial officer to issue a warrant;

(4) Make investigations in the enforcement of such laws and, in connection with such investigations, to go upon any property outside buildings, whether posted or otherwise, in the performance of such officer's duties;

(5) Seize and take possession of all property which is declared contraband under such laws; and

(6) Carry firearms while performing such officer's duties.

(b) Each special agent or enforcement officer shall file with the commissioner a public official's bond in the amount of \$1,000.00, the cost of the bond to be borne by the department. Nothing in this chapter shall be construed to relieve agents and officers, after making an arrest, from the duties imposed generally to obtain a warrant promptly and to return arrested persons without undue delay before a person authorized to examine, commit, or receive bail as required by general law.

(c) After a special agent or enforcement officer has accumulated 25 years of service with the department, upon leaving the department under honorable conditions, such special agent or enforcement officer shall be entitled as part of such officer's compensation to retain his or her weapon and badge pursuant to regulations promulgated by the commissioner.

(d) As used in this subsection, the term "disability" means a disability that prevents an individual from working as a law enforcement officer. When a special agent or enforcement officer leaves the department as a result of a disability arising in the line of duty, such special agent or enforcement officer shall be entitled as part of such officer's compensation to retain his or her weapon and badge in accordance with regulations promulgated by the commissioner. (Ga. L. 1967, p. 577, § 1; Code 1933, § 91A-5524, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1996, p. 1074, § 2; Ga. L. 2003, p. 665, § 33; Ga. L. 2004, p. 1058, § 5; Ga. L. 2005, p. 60, § 48/HB 95.)

Cross references. — Powers and duties of agents of Georgia Bureau of Investigation relating to enforcement of laws pertaining to manufacture, transportation of cigars, cigarettes or little cigars, § 35-3-8.

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

48-11-20. Venue as to violations of chapter; commissioner's certificate as prima-facie evidence.

The failure to do any act required by this chapter shall be deemed an act committed in part at the office of the commissioner in Atlanta. The certificate of the commissioner to the effect that any act required by this chapter has not been done shall be prima-facie evidence that the act has not been done. (Ga. L. 1955, p. 268, § 23; Code 1933, § 91A-5521, enacted by Ga. L. 1978, p. 309, § 2.)

Law reviews. — For note discussing resolution of venue questions, see 9 Ga. problems with venue in Georgia, and proposing statutory revisions to improve the St. B.J. 254 (1972).

48-11-21. Jurisdiction of superior courts of criminal violations of chapter.

The superior courts of this state shall have jurisdiction of offenses against this chapter which are punishable by fine or imprisonment, or both. (Ga. L. 1955, p. 268, § 23; Code 1933, § 91A-5522, enacted by Ga. L. 1978, p. 309, § 2.)

48-11-22. Transportation of unstamped tobacco products; requirement of invoices or delivery tickets; contents; confiscation and disposition absent invoice or ticket; penalty; applicability.

(a) Every person who transports upon the public highways, roads, and streets of this state cigars, cigarettes, or loose or smokeless tobacco not stamped or on which tax has not been paid in accordance with the alternate regulations provided by the commissioner under Code Section 48-11-3 shall have in such person's actual possession invoices or delivery tickets for the cigars, cigarettes, and loose or smokeless tobacco which show the true name and address of the consignor or seller, the true name of the consignee or purchaser, the quantity and brands of the cigars, cigarettes, or loose or smokeless tobacco transported, and the name and address of the person who has assumed or shall assume the payment of the tax at the point of ultimate destination. In the absence of the invoices or delivery tickets, the cigars, cigarettes, or loose or smokeless tobacco being transported and the vehicles in which the cigars, cigarettes, or loose or smokeless tobacco is being transported shall be confiscated and disposed of as provided in Code Section 48-11-9; and the transporter may be liable for a penalty of not more than \$50.00 for each individual carton of little cigars or cigarettes, \$50.00 for each individual box of cigars, and \$50.00 for each individual container of loose or smokeless tobacco being transported by such person. The penalty shall be recovered as provided in subsection (c) of Code Section 48-11-24.

(b) This Code section shall apply only to the transportation of more than 200 cigarettes, more than 200 little cigars, more than 20 cigars, or more than six containers of loose or smokeless tobacco. (Ga. L. 1955, p. 268, § 22; Ga. L. 1967, p. 563, § 12; Code 1933, § 91A-5519, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 34; Ga. L. 2012, p. 831, § 8/HB 1071.)

The 2012 amendment, effective January 1, 2013, in subsection (a), in the next-to-last sentence, twice substituted “\$50.00” for “\$25.00” and inserted “little cigars or”; and, in subsection (b), deleted “with respect” following “apply only” and inserted “more than 200 little cigars,”.

Editor’s notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2003.’”

48-11-23. Transporting tobacco products in violation of Code Section 48-11-22; penalty.

(a) It shall be unlawful for any person, with the intent to evade the tax imposed by this chapter, to transport cigars, cigarettes, or loose or smokeless tobacco in violation of Code Section 48-11-22.

(b) Any person who violates Code Section 48-11-22, with the intent to evade the tax imposed by this chapter, shall, upon conviction, be subject to the following punishments:

(1) If such person is transporting more than 20 but fewer than 60 cigars, more than 200 but fewer than 600 cigarettes or little cigars, or more than six but fewer than 18 containers of loose or smokeless tobacco, such person shall be guilty of a misdemeanor;

(2) If such person is transporting 60 or more but fewer than 200 cigars, 600 or more but fewer than 2,000 cigarettes or little cigars, or 18 or more but fewer than 60 containers of loose or smokeless tobacco, such person shall be guilty of a misdemeanor of a high and aggravated nature; or

(3) If such person is transporting 200 or more cigars, 2,000 or more cigarettes or little cigars, or 60 or more containers of loose or smokeless tobacco, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than three years nor more than ten years. (Ga. L. 1969, p. 710, § 5; Code 1933, § 91A-9926, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 35; Ga. L. 2012, p. 831, § 9/HB 1071.)

The 2012 amendment, effective January 1, 2013, inserted the first occurrence of “the” in subsection (a); and substituted the present provisions of subsection (b) for the former provisions, which read: “Any person who violates Code Section 48-11-22 shall be guilty of a misdemeanor.”

Editor’s notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2003.’”

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 521.

48-11-23.1. Additional requirements on the sale of tobacco products; seizure and forfeiture of contraband; revocation of licenses.

(a) As used in this Code section, the term “package” means a pack, carton, or container of any kind in which cigarettes or loose or smokeless tobacco is offered for sale, sold, or otherwise distributed, or intended for distribution, to consumers.

(b) No tax stamp may be affixed to, or made upon, any package of cigarettes or loose or smokeless tobacco if:

(1) The package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1331, et seq., for the placement of labels, warnings, or any other information upon a package of cigarettes or loose or smokeless tobacco that is to be sold within the United States;

(2) The package is labeled “For Export Only,” “U.S. Tax Exempt,” “For Use Outside U.S.,” or similar wording indicating that the manufacturer did not intend that the product be sold in the United States;

(3) The package, or a package containing individually stamped packages, has been altered by adding or deleting the wording, labels, or warnings described in paragraph (1) or (2) of this subsection;

(4) The package has been imported into the United States after January 1, 2000, in violation of 26 U.S.C. Sec. 5754;

(5) The package in any way violates federal trademark or copyright laws; or

(6) The package in any way violates Code Section 10-13A-5.

(c) Any person who sells or holds for sale a cigarette or loose or smokeless tobacco package to which is affixed a tax stamp in violation of subsection (b) of this Code section shall be guilty of a misdemeanor.

(d) Notwithstanding any other provision of law, the commissioner may revoke any license issued under this chapter to any person who sells or holds for sale a cigarette or loose or smokeless tobacco package to which is affixed a tax stamp in violation of subsection (b) of this Code section.

(e) Notwithstanding any other provision of law, the commissioner may seize and destroy or sell to the manufacturer, only for export, packages that do not comply with subsection (b) of this Code section.

(f) A violation of subsection (b) of this Code section shall constitute an unfair and deceptive act or practice under Part 2 of Article 15 of

Chapter 1 of Title 10, the “Fair Business Practices Act of 1975.” (Code 1981, § 48-11-23.1, enacted by Ga. L. 1999, p. 156, § 1; Ga. L. 2003, p. 665, § 36; Ga. L. 2003, p. 829, § 4.)

Editor’s notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2003.’”

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 51 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprintable offenses. — Violation of O.C.G.A. § 48-11-23.1 is not designated as an offense for which fingerprint-

ing is required. 1999 Op. Att’y Gen. No. 99-17.

48-11-24. Penalties for possession of unstamped tobacco products; penalty for operation of unlicensed business or activity; procedure for enforcement and collection of penalties; costs and expenses.

(a) Any person who possesses unstamped cigarettes or nontax-paid cigars, or little cigars, or loose or smokeless tobacco in violation of this chapter shall be liable for a penalty of not more than \$50.00 for each individual carton of unstamped cigarettes and \$50.00 for each individual nontax-paid carton of little cigars, box of cigars or container of loose or smokeless tobacco in his or her possession.

(b) Any person who engages in any business or activity for which a license is required by this chapter without first having obtained a license to do so or any person who continues to engage in or conduct the business after the person’s license has been revoked or during a suspension of the license shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be subject to imprisonment for up to 12 months, a fine of not more than \$5,000.00, or both. Each day that the business is engaged in or conducted shall be deemed a separate offense.

(c) Proceedings to enforce and collect the penalties provided by this chapter shall be brought by and in the name of the commissioner. With respect to offenses committed within the territorial jurisdiction of the court, each superior court shall have jurisdiction to enforce and collect the penalty. The costs recoverable in any such proceeding shall be recovered by the commissioner in the event of judgment in the commissioner’s favor. If the judgment is for the defendant, it shall be without costs against the commissioner. All expenses incident to the recovery of any penalty pursuant to this Code section shall be paid in the same manner as any other expense incident to the administration of this chapter. (Ga. L. 1955, p. 268, § 23; Ga. L. 1967, p. 563, § 13; Code 1933,

§ 91A-5520, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 37; Ga. L. 2012, p. 831, § 10/HB 1071.)

The 2012 amendment, effective January 1, 2013, in subsection (a), substituted “cigarettes or nontax-paid cigars, or little cigars,” for “cigarettes or loose or smokeless tobacco or nontax-paid cigars”, substituted “\$50.00” for “\$25.00”, deleted “or loose or smokeless tobacco” following “unstamped cigarettes”, and substituted “individual nontax-paid carton of little cigars, box of cigars or container of” for “individual box of nontax-paid cigars or”; in subsection (b), in the first sentence, substituted “the person’s” for “his” and substituted “guilty of a misdemeanor of a

high and aggravated nature and, upon conviction thereof, shall be subject to imprisonment for up to 12 months, a fine of not more than \$5,000.00, or both” for “liable for a penalty of not more than \$250.00”; and substituted “the commissioner’s” for “his” in the third sentence of subsection (c).

Editor’s notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2003.’”

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 73 et seq.

C.J.S. — 53 C.J.S., Licenses, § 121 et seq.

48-11-25. Violations of chapter; penalties.

(a)(1) It shall be unlawful for any person, with the intent to evade the tax imposed by this chapter, to possess unstamped cigarettes or loose or smokeless tobacco or nontax-paid cigars or loose or smokeless tobacco.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(b)(1) It shall be unlawful for any person, with the intent to evade the tax imposed by this chapter, to:

(A) Sell cigarettes or loose or smokeless tobacco without the stamps required by this chapter being affixed to the cigarettes or loose or smokeless tobacco; or

(B) Sell cigars or loose or smokeless tobacco without the stamp or stamps required by this chapter or without the tax being paid on the cigars or loose or smokeless tobacco in accordance with the alternate method.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one year nor more than ten years. (Ga. L. 1955, p. 268, § 23; Ga. L. 1967, p. 563, § 14; Ga. L. 1969, p. 710, §§ 6, 7; Code 1933, § 91A-9921, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 38.)

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 521, 543. **C.J.S.** — 53 C.J.S., Licenses, § 128.

48-11-26. Failure to file report or filing false report required by chapter; penalty.

(a) With respect to this chapter, it shall be unlawful for any person, with the intent to defraud the state or evade the payment of any tax, penalty, or interest or any part of a payment when due, to:

(1) Willfully fail or refuse to file any report or statement required to be filed pursuant to this chapter or by the commissioner's rules and regulations; or

(2) Aid or abet another in the filing with the commissioner of any false or fraudulent report or statement.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be subject to a fine of not more than \$1,000.00 for each separate offense. (Ga. L. 1955, p. 268, § 23; Code 1933, § 91A-9922, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2012, p. 831, § 11/HB 1071.)

The 2012 amendment, effective January 1, 2013, added "or" at the end of paragraph (a)(1); deleted former paragraph (a)(2), which read: "File or cause to be filed with the commissioner any false or fraudulent report or statement; or"; reded-

ignated former paragraph (a)(3) as present paragraph (a)(2); and added "of a high and aggravated nature and, upon conviction thereof, shall be subject to a fine of not more than \$1,000.00 for each separate offense" at the end of subsection (b).

RESEARCH REFERENCES

C.J.S. — 37 C.J.S., Fraud, §§ 12 et seq., 115, 123 et seq. 84 C.J.S., Taxation, §§ 542, 547. 85 C.J.S., Taxation, §§ 1715, 1724 et seq., 1785.

48-11-27. False entries on invoices or records pursuant to chapter; penalty.

(a) It shall be unlawful for any person to:

(1) Make a false entry upon any invoices or any record relating to the purchase, possession, or sale of cigarettes or loose or smokeless tobacco; or

(2) With intent to evade any tax imposed by this chapter, present any false entry upon any such invoice or record for the inspection of the commissioner or the commissioner's authorized agents.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$250.00 for each separate offense. (Ga. L. 1955, p. 268, § 23; Code 1933, § 91A-9923, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 39.)

Editor's notes. — Ga. L. 2003, p. 665, and may be cited as the 'State and Local § 1, not codified by the General Assembly, Tax Revision Act of 2003.' provides that: "This Act shall be known

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, § 128.

48-11-28. Possession, use, manufacture, or other unlawful activities involving counterfeited stamps or tampering with metering machine pursuant to chapter; penalty.

(a) With respect to this chapter, it shall be unlawful for any person to:

(1) Fraudulently make, utter, forge, or counterfeit any stamp prescribed by the commissioner;

(2) Cause or procure a violation of paragraph (1) of this subsection to be done;

(3) Willfully utter, publish, pass, or render as true any false, altered, forged, or counterfeited stamp;

(4) Knowingly possess any false, altered, forged, or counterfeited stamp;

(5) For the purpose of evading the tax imposed, use more than once any stamp required by this chapter; or

(6) Tamper with or cause to be tampered with any metering machine authorized to be used.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than three years nor more than ten years. (Ga. L. 1955, p. 268, § 23; Code 1933, § 91A-9924, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2012, p. 831, § 12/HB 1071.)

The 2012 amendment, effective January 1, 2013, substituted "three years" for "one year" in subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 521.

48-11-29. Swearing and testifying falsely with respect to matters governed by chapter; penalty.

Reserved. Repealed by Ga. L. 2012, p. 831, § 13/HB 1071, effective January 1, 2013.

Editor's notes. — This Code section Code 1933, § 91A-9925, enacted by Ga. L. was based on Ga. L. 1955, p. 268, § 23; 1978, p. 309, § 2.

48-11-30. Penalty for sale or possession of counterfeit cigarettes.

(a) Notwithstanding any other provision of law, the sale or possession for sale of counterfeit cigarettes by any person shall result in the seizure of the product and related machinery by the commissioner or his or her authorized agents and any law enforcement agency at the direction of the commissioner and shall be punishable as follows:

(1) A first violation with a total quantity of less than two cartons of cigarettes shall be punishable by a fine of \$1,000.00 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both the fine and imprisonment;

(2) A subsequent violation with a total quantity of less than two cartons of cigarettes shall be punishable by a fine of \$5,000.00 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both the fine and imprisonment;

(3) A first violation with a total quantity of two cartons of cigarettes or more shall be punishable by a fine of \$2,000.00 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both the fine and imprisonment; and

(4) A subsequent violation with a quantity of two cartons of cigarettes or more shall be punishable by a fine of \$50,000.00 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both the fine and imprisonment.

(b) An act committed by or on behalf of a licensed cigarette manufacturer, cigarette importer, cigarette distributor, or cigarette dealer in violation of paragraph (2) or (4) of subsection (a) of this Code section

shall also result in the revocation of the license by the department pursuant to Code Section 48-11-6.

(c) Any counterfeit cigarette seized by or at the direction of the commissioner shall be destroyed by the commissioner or his or her designee. Any related machinery seized by or at the direction of the commissioner may be sold by the commissioner at public auction in accordance with the requirements of Code Section 48-11-9. (Code 1981, § 48-11-30, enacted by Ga. L. 2004, p. 384, § 4; Ga. L. 2009, p. 8, § 48/SB 46.)

CHAPTER 12

ESTATE TAX

Sec.

- 48-12-1. Definition.
- 48-12-1.1. Exception for estates with dates of death in years for which a federal tax credit for state death taxes was not allowed.
- 48-12-2. Filing duplicate of federal estate tax return; payment of state estate tax equal to federal credit; reduction for tax credit arising from property taxed in another state; changes based on federal returns.
- 48-12-3. Nonresident decedents owning real property or personal property having business situs in state; filing duplicate of federal estate tax return; procedure; payment of state estate tax; adjustments based on federal calculation.

Sec.

- 48-12-4. Extension of time for filing duplicate return; limit; application; extension for payment of tax; application; termination; payment of tax plus interest upon termination; bond.
- 48-12-5. Untimely filing of duplicate return of decedent's estate; assessment of estate for state estate tax; production of evidence; notice to personal representative of amount of tax and interest due.
- 48-12-6. Failure to pay timely tax assessed or failure to pay tax on or before filing; issuance of execution; enforcement; interest; penalty.

Cross references. — Probate, T. 53, C. 5.

Administrative rules and regulations. — Estates, Official Compilation of the Rules and Regulations of the State of

Georgia, Department of Revenue, Income Tax Division, § 560-7-3-.12.

Law reviews. — For article, "Probate and Tax Checklist for Estates in Georgia," see 23 Ga. St. B.J. 140 (1987).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, State and Local Taxation, § 641.

Am. Jur. Proof of Facts. — Surcharge of Executor for Nonpayment of Estate's Tax Liabilities, 26 POF2d 663.

C.J.S. — 85 C.J.S., Taxation, § 1930 et seq.

ALR. — Time as of which value of property is to be computed for purpose of estimating inheritance tax, 13 ALR 127; 86 ALR 1030; 160 ALR 1059.

Inheritance or succession tax on property covered by power of appointment, 18 ALR 1470; 23 ALR 738; 64 ALR 740; 124 ALR 653; 141 ALR 954; 150 ALR 730; 174 ALR 635.

Retrospective operation of succession

tax, 26 ALR 1461; 66 ALR 404; 109 ALR 858; 114 ALR 518.

Tombstone and funeral expenses as deductible items in computation of inheritance or succession tax, 28 ALR 671; 83 ALR 931.

Income during administration as part of value of estate on which succession tax is to be computed, 32 ALR 850.

Succession or estate tax in its application to dower and statutory allowances, 37 ALR 541; 105 ALR 380; 122 ALR 181.

Constitutionality of discrimination in succession tax based on relationship or amount of estate, 39 ALR 504.

Applicability of succession tax law to antenuptial contract, 44 ALR 1475.

When transfer deemed to take effect in possession or enjoyment at or after death within Inheritance Tax Law, 49 ALR 864; 67 ALR 1247; 100 ALR 1244; 121 ALR 359; 155 ALR 850; 167 ALR 438.

Power to impose tax on estate in respect to property transferred in contemplation of death or by a conveyance intended to take effect in possession or enjoyment at death, 52 ALR 1091.

Exemption of government securities from succession or inheritance tax, 55 ALR 867.

Construction and effect of provisions in succession tax law for deduction on account of property received by decedent from estate of another decedent, 57 ALR 1099; 114 ALR 1306.

Life insurance as affecting transfer or succession tax, 63 ALR 394; 92 ALR 943; 118 ALR 324; 150 ALR 1268.

Questions arising under state legislation to take advantage of provisions of Federal Revenue Act allowing credits on account of inheritance, legacy, or succession taxes paid to state, 63 ALR 1096; 147 ALR 467.

Subsequent developments as authorizing increase of amount of succession tax fixed by taxing authorities, 64 ALR 1281.

Succession tax at domicile of debtor or corporation as to credits or corporate stock belonging to estate of nonresident, 65 ALR 1008; 72 ALR 1310; 77 ALR 1411; 139 ALR 1458.

Situs for property taxation as between different states or countries, of personal property, or interests therein, held by trustees, executors, or administrators, 67 ALR 393; 127 ALR 379; 172 ALR 341.

Doctrine as to possibility of issue extinct as affecting property rights or taxation, 67 ALR 538; 146 ALR 794; 98 ALR2d 1285.

Community property as subject of succession tax, 69 ALR 780.

Reciprocity provisions of succession tax laws, 69 ALR 949; 139 ALR 1062.

Gift or trust for benefit of employees of corporation or business as within exemption or deduction provisions of succession tax or income tax law, 71 ALR 870.

When transfer deemed to be one in contemplation of death within the meaning of the Inheritance Tax Law, 75 ALR 544; 120 ALR 170; 148 ALR 1051.

Succession tax in respect of interest or right incident to an executory contract for the sale of land in a state other than that of the vendor's domicile, 78 ALR 793.

Succession tax at domicile of decedent as to personal property located elsewhere, or the obligations of nonresidents or foreign corporations, 86 ALR 741.

Succession tax in state or country in which personal property (or evidence thereof) belonging to the estate of a nonresident decedent is found, 86 ALR 760.

Deductibility in computing state income tax of amount paid or payable in respect of succession, inheritance, or estate tax, 108 ALR 1401.

Succession, estate, or gift tax in respect of or as affected by conveyance or transfer restoring to original owner property transferred by him to defraud or delay creditors, 108 ALR 1508.

Discrimination in succession or estate tax statute between estates closed and those not closed at date of its passage of effective operation, 109 ALR 737.

Deduction of indebtedness of insolvent estate in computing estate or inheritance tax in respect of assets exempt from debts, 110 ALR 1255.

Deductibility in computing estate or succession tax of decedent's liability as surety, guarantor, or endorser, 113 ALR 368.

Deductibility in computation of succession, inheritance, or estate tax of debt secured by mortgage upon real estate situated outside of jurisdiction, 113 ALR 389.

Burden of estate or succession tax in respect of inter vivos gift or trust, 115 ALR 916; 15 ALR2d 1216.

Burden, as between corpus and income, of inheritance, estate, or succession tax, 117 ALR 121.

Legacy or devise to or for benefit of municipality as subject to payment of inheritance, succession, or estate taxes, 120 ALR 1388.

Diverse adjudications, actual or potential, by courts of different states, as to domicile of decedent as regards taxation, administration, or distribution of estates, 121 ALR 1200.

Pendency of administration on the estate of a decedent at time of death of beneficiary as affecting inheritance or suc-

cession tax in respect of the latter's estate, 122 ALR 935.

Validity and construction of statute or ordinance providing for relief of poor persons from taxes, 123 ALR 597.

Personal liability of executor, administrator, or trustee for succession tax, 128 ALR 123.

Aggregation of two or more transfers or gifts to same person, in computing inheritance, succession, or estate tax, 136 ALR 340.

Computation and burden of estate tax as affected by a residuary bequest to a religious, educational, or charitable institution, 140 ALR 833.

Gift tax, 141 ALR 452.

Construction and application of statutory provisions taxing legatees, heirs, or trust beneficiaries on income distributable or distributed to them, 141 ALR 1055.

Succession, inheritance, or estate tax in respect of decedent's interest in partnership, 144 ALR 1134.

Questions arising under state legislation to take advantage of provisions of Federal Revenue Act allowing credits on account of inheritance, legacy, or succession taxes paid to state, 147 ALR 467.

Discretion, provided for in will, as to making of charitable bequest, or as to its amount, as affecting its exemption or deduction for purposes of estate, succession, or inheritance tax, 149 ALR 1333.

Meaning and application of word "representation" within inheritance, succession, or estate tax law, 156 ALR 404.

Inheritance, succession, or estate tax in respect of bond or other obligation purchased by decedent but payable either absolutely, or in a specified event, to a third person, 156 ALR 559.

Entire corpus or only value of reserved interest as taxable, under provision of estate or inheritance tax law relating to transfers intended to take effect at death, 159 ALR 233.

Classification for purposes of inheritance or succession or estate tax of one who takes by virtue of lapsed legacy statute, 168 ALR 271.

Rights and remedies of executor or administrator as regards estate or succession tax paid or payable by him on property not passing under will or coming into his possession, 1 ALR2d 978.

Succession or estate tax as affecting or as affected by estate by entirety or other joint estate with right of survivorship, 1 ALR2d 1101.

Illegitimate child as "lineal descendant" and "child" within the provisions of inheritance, succession, or estate tax statutes respecting exemption and tax rates, 3 ALR2d 166.

Time as of which rate of tax applicable to transfer in contemplation of death, or to take effect on death, is determined, 5 ALR2d 1065.

Valuation of property for purposes of estate, succession, or gift tax as affected by contract or bylaw specifying price at which property may or must be sold, purchased, or offered, 5 ALR2d 1122.

Transfer in trust divesting donor of all interest and control, but withholding ultimate distribution until his death, as subject to estate or inheritance tax, 6 ALR2d 223.

Liability of life insurer which pays proceeds of policy direct to beneficiary, for the portion of estate or succession tax attributable to such proceeds, 10 ALR2d 657.

Inheritance, succession, or estate tax on property covered by power of appointment as affected by location of property, or residence of parties, outside the taxing state or country, 19 ALR2d 1415.

Valuation of corporate stock for purposes of succession, inheritance, or estate tax, as affected by quantity involved, 23 ALR2d 775.

Death or divorce of blood relative as affecting relationship by affinity for purposes of inheritance, succession, or estate tax, 26 ALR2d 271.

Deductibility of attorney's fees, as administrative expenses and the like, in computing succession or estate tax, 30 ALR2d 1108.

Succession, estate, or inheritance tax as affected by compromise of will contest, 36 ALR2d 917.

Construction and effect of provisions of will relied upon as affecting the burden of taxation, 37 ALR2d 7; 70 ALR3d 630.

Taxability of trustor's estate for retention of power to designate persons who shall possess or enjoy, 39 ALR2d 461.

State inheritance, estate, or succession tax on United States savings bonds, 39 ALR2d 698.

Deduction of exemption as affecting rate and computation of inheritance taxes, 40 ALR2d 630.

Statutory provision that specified fund or property shall be “exempt from taxation,” “exempt from any tax,” or the like, as exempting such property from estate or succession taxes, 47 ALR2d 999.

Children of adopted child, or adopted children of natural child, as “lineal descendants” within provisions of inheritance, succession, or estate tax statutes respecting exemption and tax rates, 51 ALR2d 854.

Applicability of dead man statute to proceedings to determine liability for succession, estate, or inheritance tax, 66 ALR2d 714.

Succession and estate tax: construction of statute or regulation exempting gifts to foreign charitable, educational, or religious body on reciprocal basis, 12 ALR3d 918.

Inter vivos settlement of disputed claim as consideration within statutes excepting transfers for consideration from estate, succession, or inheritance tax, 13 ALR3d 657.

Renunciation of inheritance, devise, or legacy as affecting state inheritance, estate, or succession tax, 27 ALR3d 1354.

Construction and effect of Uniform Gifts to Minors Act, 50 ALR3d 528.

Deduction of federal gift tax in computing state inheritance tax, 56 ALR3d 1322.

Valuation of corporate stock for purposes of state gift, inheritance, or estate tax, as affected by predetermined price in buy-out or first-option agreement among stockholders or with corporation, 58 ALR3d 1104.

Surviving spouse taking elective share as chargeable with estate or inheritance tax, 67 ALR3d 199.

Liability of income beneficiary of trust for proportionate share of estate or inheritance tax in absence of specific direction in statute, will, or other instrument, 67 ALR3d 273.

Construction and effect of will provisions expressly relating to the burden of estate or inheritance taxes, 69 ALR3d 122.

Construction and application of statutes apportioning or prorating estate taxes, 71 ALR3d 247.

Remedies and practice under estate tax apportionment statutes, 71 ALR3d 371.

Modern status of law as to equitable adoption or adoption by estoppel, 97 ALR3d 347.

Valuation of closely held stock for federal estate tax purposes under sec. 2031(b) of Internal Revenue Code of 1954 (26 USCS sec. 2031(b)), and implementing regulations, 22 ALR Fed 31.

48-12-1. Definition.

As used in this chapter, the term “federal filing date” means the date by which the federal estate tax return must be filed as required by the Internal Revenue Code. (Code 1933, § 92-3406, enacted by Ga. L. 1976, p. 624, § 5; Code 1933, § 91A-5701, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 1930, 1931, 1964 et seq., 2041.

ALR. — Judgment in suit to recover

overpayment of estate or succession tax as res judicata, 118 ALR 1065.

48-12-1.1. Exception for estates with dates of death in years for which a federal tax credit for state death taxes was not allowed.

This chapter shall not apply to any estate with a date of death which occurred in a year for which the Internal Revenue Code does not allow a credit for state death taxes. (Code 1981, § 48-12-1.1, enacted by Ga. L. 2005, p. 159, § 26/HB 488.)

Editor's notes. — Ga. L. 2005, p. 159, § 27(g)/HB 488, not codified by the General Assembly, provides that this Code section shall apply to estates of decedents with a date of death after December 31, 2004.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

48-12-2. Filing duplicate of federal estate tax return; payment of state estate tax equal to federal credit; reduction for tax credit arising from property taxed in another state; changes based on federal returns.

(a) It shall be the duty of the personal representative of the estate of any individual who dies a resident of this state and whose estate is subject to the filing of a federal estate tax return to file with the commissioner a duplicate of the federal estate tax return which the personal representative is required to file with the federal authorities. The duplicate estate tax return must be filed within the time period required for filing the return with the federal authorities, including any extensions to the period for filing, and shall be filed not later than the date on which the estate tax return is filed with the federal authorities. If the duplicate return is filed after the federal filing date, not including any extensions, the personal representative shall attach to the duplicate return filed with the commissioner a copy of the written approval received from the federal authorities granting an extension of time for filing.

(b) On or before the date the duplicate return is filed with the commissioner, the personal representative shall pay to the state a tax in an amount equal to the amount allowable as a credit for state death taxes under Section 2011 of the Internal Revenue Code of 1986. If the tax is paid later than the federal filing date, not including any extensions, the personal representative shall pay interest on the tax at the rate specified in Code Section 48-2-40 from the filing date to the time of payment. If the decedent owned at the time of his death either real property in another state or personal property having a business situs in another state and the other state requires the payment of a tax for which credit is received against federal estate taxes, any tax due under this chapter shall be reduced by an amount which bears the same

ratio to the total state tax credit allowable for federal estate tax purposes as the value of the property taxable in the other state bears to the value of the entire gross estate for federal estate tax purposes.

(c) If, after the filing of a duplicate return and the payment of the state estate tax and any interest due on the state estate tax, the amount allowable as a credit for state death taxes as finally determined by the federal authorities for federal estate tax purposes is increased or decreased with respect to the amount shown on the original return, the personal representative of the estate shall file with the commissioner, within 30 days of the federal adjustment, a copy of the documentation received from the federal authorities and such other or additional documentation as the commissioner may require showing all changes made in the original return and the increase or decrease in the amount allowable as a credit for state death taxes. On or before the date of the filing of the documentation, the personal representative shall pay any additional tax due the state plus interest on such tax at the rate specified in Code Section 48-2-40 from the federal filing date, not including any extensions, to the date of the payment. In the event of a decrease in the credit for state death taxes, the commissioner shall refund to the estate any overpayment of the tax imposed by this Code section, plus interest at the rate specified in Code Section 48-2-40 from the federal filing date, not including any extensions, to the date of payment of the refund. (Ga. L. 1925, p. 63, § 1; Ga. L. 1926, Ex. Sess., p. 15, § 1; Ga. L. 1927, p. 103, § 1; Ga. L. 1931, p. 7, § 15; Code 1933, § 92-3401; Ga. L. 1960, p. 835, § 1; Ga. L. 1976, p. 624, § 1; Code 1933, § 91A-5702, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 38; Ga. L. 1987, p. 191, § 8.)

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of

1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

U.S. Code. — Section 2011 of the Internal Revenue Code, referred to in subsection (b), is codified as 26 U.S.C. § 2011.

Law reviews. — For article discussing the effect of federal and state estate tax law upon estates inherited in Georgia, see 17 Ga. B.J. 29 (1954). For article proposing replacement of Georgia's estate tax with an inheritance tax, see 10 Ga. L. Rev. 447 (1976).

JUDICIAL DECISIONS

Taxes attributable to appointed property not payable from donee's estate in absence of direction by donee. — When, by her will, a testatrix

exercises a power of appointment conferred by her husband's will over a trust estate left by him, and disposes of her own individual estate, and estate taxes for both are calculated against the estate of the testatrix and paid by her executor, although under the applicable federal tax statute all such taxes are primarily chargeable to the estate of the donee exercising the power of appointment, and

collectible by the government as such, the portion of the estate taxes attributable to the appointed property is not finally payable out of the individual estate of the donee of the power, insofar as the two estates are concerned, in the absence of direction by the donee of the power so to do. *Regents of Univ. Sys. v. Trust Co.*, 194 Ga. 255, 21 S.E.2d 691 (1942).

OPINIONS OF THE ATTORNEY GENERAL

Exemption of intangible property which has acquired taxable situs in another state. — Principle that intangible property of a resident which had acquired taxable situs incident to the conduct of business in another state will receive property tax relief in this state applied to the interpretation of former Code 1933, §§ 92-3401 and 92-3402 (see O.C.G.A. §§ 48-12-2 and 48-12-3) for es-

tate tax purposes. 1960-61 Op. Att'y Gen. p. 483.

Interest on overdue taxes. — Additional tax bears interest at the rate set forth in Ga. L. 1937-38, Ex. Sess., p. 77 after notice, unless an execution was issued pursuant to former Code 1933, § 92-3404 (see O.C.G.A. § 48-12-6). 1970 Op. Att'y Gen. No. 70-139.

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes, §§ 50 et seq., 161, 191, 223 et seq., 230, 231.

C.J.S. — 85 C.J.S., Taxation, § 2080.

ALR. — Personal property passing under mutual survivorship agreement as subject to transfer or succession tax, 3 ALR 1640.

Applicability of succession tax law to antenuptial contract, 4 ALR 461; 44 ALR 1475.

When transfer deemed to be one in contemplation of death, within the meaning of the inheritance tax law, 7 ALR 1028; 21 ALR 1335; 41 ALR 989; 75 ALR 544; 120 ALR 170; 148 ALR 1051.

Consideration as affecting the liability to a succession or inheritance tax, 7 ALR 1046; 157 ALR 964.

Whole estate or individual shares as basis of computation of inheritance tax, 11 ALR 825.

Deduction of succession tax paid in other state before computing local succession tax, 23 ALR 852.

Inheritance tax on absentee's estate, 24 ALR 854.

Retrospective operation of succession

tax, 26 ALR 1461; 66 ALR 404; 109 ALR 858; 114 ALR 518.

Time of assessment of succession tax on future contingent interests, 30 ALR 478.

Succession or estate tax in its application to dower and statutory allowances, 37 ALR 541; 105 ALR 380; 122 ALR 181.

Succession tax at domicile of decedent as to personal property located elsewhere, or the obligations of nonresidents foreign corporations, 42 ALR 327; 86 ALR 741.

Doctrine of equitable conversion as affecting succession tax as to real property situated in a state or country other than the domicile, 42 ALR 426.

Deduction of federal estate tax before computing state tax, 44 ALR 1461.

Life insurance as affecting transfer or succession tax, 47 ALR 525; 63 ALR 394; 92 ALR 943; 118 ALR 324; 150 ALR 1268; 73 ALR2d 157.

Attempted waiver or tolling of statute of limitation or nonclaim in respect of indebtedness of decedent's estate as affecting succession tax, 76 ALR 1456.

Exemption from succession tax in respect of bequests or expenditures in connection with cemetery and burial, 83 ALR 931.

Valuation of property for purpose of succession tax, 83 ALR 939; 117 ALR 143.

Deduction of commissions of executors, administrators, or trustees in computing succession or estate tax, 92 ALR 537.

Deductibility in determining amount of succession or gift tax, of amount expended by distributee, legatee, or donee in establishing right to take, or by executor or administrator in resisting attack on will or claims to participate in distribution, 96 ALR 626.

Situs for purposes of succession tax in respect of intangibles placed by a trustor domiciled in one jurisdiction with a trustee domiciled in another, 96 ALR 674.

Deductibility in computing estate or succession tax of amount remaining unpaid at decedent's death upon his pledge to religious, charitable, or educational organization, 107 ALR 1471; 116 ALR 351.

Expectant, conditional, or contingent nature of gift or bequest to person in specified relationship to decedent as preventing deduction or exemption in computing estate tax, 112 ALR 266.

Right for purposes of succession or inheritance tax to consider extrinsic agreement to devise or bequeath property, 115 ALR 842.

Legacy or devise to or for benefit of municipality as subject to payment of inheritance, succession, or estate taxes, 120 ALR 1388.

Pendency of administration on the estate of a decedent at time of death of beneficiary as affecting inheritance or succession tax in respect of the latter's estate, 122 ALR 935.

Judicial allowance of claim against decedent's estate as conclusive for purpose of its deduction in computing estate or succession tax, 132 ALR 1464.

Questions arising under state legislation to take advantage of provisions of Federal Revenue Act allowing credits on account of inheritance, legacy, or succession taxes paid to state, 147 ALR 467.

Inheritance tax in respect of contingent remainder or class gift to two or more persons as computable on basis of single entity, 151 ALR 920.

Consideration as affecting the liability to estate, succession, or inheritance tax, 157 ALR 964.

Character for tax purposes of arrangement whereby one obtains an annuity contract having a surrender value, or obtain at the same time a life insurance policy and an annuity or endowment contract, 159 ALR 1336.

Duty or right of executor or administrator to pay tax on real estate of his decedent, 163 ALR 724.

Exemption from succession, estate, or inheritance tax of devise or bequest of property to fraternal society, 174 ALR 531.

Inheritance, succession, or estate tax on property covered by power of appointment, 174 ALR 635.

Burden of estate or succession tax in respect of inter vivos gift or trust, 15 ALR2d 1216.

What law governs apportionment of estate taxes among persons interested in estate, 16 ALR2d 1282.

Amount of attorneys' fees deductible in computing succession or estate tax, 62 ALR2d 1148.

State succession, transfer, inheritance, or estate tax in respect of life insurance and annuities, 73 ALR2d 157.

Devise or bequest pursuant to testator's contractual obligation as subject to estate, succession, or inheritance tax, 59 ALR3d 969.

Valuation of United States Treasury bonds for state inheritance or estate tax purposes, 62 ALR3d 1272.

Refund of state inheritance or estate tax where claims are proven against estate after tax was paid, 63 ALR3d 924.

Ultimate burden of estate tax in absence of statute, will, or other provision, 68 ALR3d 714.

Construction and effect of will provisions not expressly mentioning payment of death taxes but relied on as affecting the burden of estate or inheritance taxes, 70 ALR3d 630.

Construction and effect of provisions in nontestamentary instrument relied upon as affecting the burden of estate or inheritance taxes, 70 ALR3d 691.

Valuation of closely held stock for federal estate tax purposes under sec. 2031(b) of Internal Revenue Code of 1954 (26 USCS sec. 2031(b)), and implementing regulations, 22 ALR Fed 31.

48-12-3. Nonresident decedents owning real property or personal property having business situs in state; filing duplicate of federal estate tax return; procedure; payment of state estate tax; adjustments based on federal calculation.

It shall be the duty of the personal representative of the estate of any individual who dies a nonresident of this state but who owns or controls real property located in this state or personal property having a business situs in this state and whose estate is subject to the filing of a federal estate tax return to file with the commissioner a duplicate of the federal estate tax return which the personal representative is required to make to the federal authorities and to pay a tax, including interest on the tax, at the time and under the terms and conditions as set forth in Code Section 48-12-2 for the estates of resident decedents. The amount of tax to be paid by the personal representative pursuant to this Code section shall be that amount which bears the same ratio to the total state tax credit allowable for federal estate tax purposes as the value of the property taxable in this state bears to the value of the entire gross estate for federal estate tax purposes. If, after the filing of a duplicate return and the payment of the state estate tax and any interest due on the state estate tax, the amount allowable as a credit for state death taxes as finally determined for federal estate tax purposes by the federal authorities is increased or decreased with respect to the amount shown on the original return, the personal representative of the estate shall file with the commissioner a copy of the documentation received from the federal authorities and such other or additional documentation as the commissioner may require showing all changes made in the original return and the increase or decrease in the amount allowable as a credit for state death taxes. The personal representative shall pay any additional tax due plus interest on such tax or shall receive a refund for any overpayment of the tax plus interest on the amount of the refund at the time and under the terms and conditions as set forth in Code Section 48-12-2 for the estates of resident decedents. (Code 1933, § 92-3401a, enacted by Ga. L. 1941, p. 221, § 1; Code 1933, § 92-3402, enacted by Ga. L. 1961, p. 455, § 1; Ga. L. 1976, p. 624, § 2; Code 1933, § 91A-5703, enacted by Ga. L. 1978, p. 309, § 2.)

JUDICIAL DECISIONS

Taxes attributable to appointed property not payable from donee's estate in absence of direction by donee. — When, by her will, a testatrix exercises a power of appointment conferred by her husband's will over a trust estate left by him, and disposes of her own individual estate, and estate taxes for

both are calculated against the estate of the testatrix and paid by her executor, although under the applicable federal tax statute all such taxes are primarily chargeable to the estate of the donee exercising the power of appointment, and collectible by the government as such, the portion of the estate taxes attributable to

the appointed property is not finally payable out of the individual estate of the donee of the power, insofar as the two estates are concerned, in the absence of direction by the donee of the power so to do. *Regents of Univ. Sys. v. Trust Co.*, 194 Ga. 255, 21 S.E.2d 691 (1942).

Donee's personal estate not ulti-

mately and finally liable. — This section cannot reasonably be construed to make the personal estate of the donee of a power of appointment ultimately and finally liable for estate taxes upon property passing under power exercised by such donee. *Regents of Univ. Sys. v. Trust Co.*, 194 Ga. 255, 21 S.E.2d 691 (1942).

OPINIONS OF THE ATTORNEY GENERAL

Tax on economic interests in property. — Tax imposed by this section is not a tax on property but is a tax on the transfer of economic interests in that property, such interests being evidenced by ownership of the property or control over the property that was vested in a decedent. 1980 Op. Att'y Gen. No. 80-149.

Nonresident owning common stock of foreign corporation owning property. — Estate of nonresident decedent who at time of death owned all of common stock of a foreign corporation which in turn was sole owner of real and personal property located within Georgia is required to file estate tax return with Georgia and to pay Georgia estate tax. 1980 Op. Att'y Gen. No. 80-149.

1980 Op. Att'y Gen. 80-149, stating that the estate of a nonresident decedent owning 100 percent of the common stock of a foreign corporation owning real and personal property located in Georgia was required to file an estate tax return with Georgia and pay Georgia estate tax, was modified by narrowing its application to more limited circumstances in 1984 Op. Att'y Gen. Op. No. 84-45.

Property owned by corporation of which nonresident decedent is only shareholder. — Georgia property owned by a corporation of which a nonresident decedent is 100 percent shareholder should not ordinarily be considered property "owned or controlled" by the decedent, within the meaning of the Georgia estate tax statutes, unless there is some circumstance such as use of the corporate entity to defeat justice, perpetrate fraud or to evade contractual or tort responsibility or the principal shareholder or owner of the corporation's conducting private and corporate business on an interchangeable or joint basis as if they were one. 1984 Op. Att'y Gen. No. 84-45.

Exemption of intangible property which has acquired taxable situs in another state. — Principle that intangible property of a resident which had acquired taxable situs incident to the conduct of business in another state will receive property tax relief in this state applied to the interpretation of former Code 1933, §§ 92-3401 and 92-3402 (see O.C.G.A. §§ 48-12-2 and 48-12-3) for estate tax purposes. 1960-61 Op. Att'y Gen. p. 483.

When securities owned by nonresident not taxable in this state. — Securities owned by a nonresident, held by a person in this state for purposes having no connection with any business being conducted in this state by such nonresident, agents, or employees, or with any property in this state owned by such nonresidents, would not have a taxable situs or be property located within this state within the meaning of this section or be subject to the Georgia estate tax. 1960-61 Op. Att'y Gen. p. 483.

Determination of whether securities have business situs in this state. — In determining whether securities have acquired a business situs here, the fact that these securities are not related to the operation of a business in this state in the usual sense of the word is not entirely conclusive. A trustee's state may have sufficient relationship with securities held in trust to enable it to tax them along with the deceased owner's state of domicile. 1958-59 Op. Att'y Gen. p. 366.

Activities of broker on behalf of out-of-state client giving rise to taxation. — If a Georgia broker is acting purely as a broker for an out-of-state client, being a mere custodian of the securities, and acting in every situation solely upon instructions of a customer, then

these securities have no taxable situs in Georgia. But, if the Georgia broker has discretion in the handling of the securities, being able to buy and sell securities on the broker's own judgment subject only to a general scheme established by the out-of-state customer, then these securities have obtained a taxable situs in this state, and this state may impose the state's inheritance tax upon the securities. 1958-59 Op. Att'y Gen. p. 366.

Intangible personal property ac-

cruing from a partnership doing business in this state is subject to payment of the estate tax, although owned by a nonresident decedent. 1952-53 Op. Att'y Gen. p. 201.

Taxation of estate of nonresident alien. — When a nonresident alien left as sole property in the United States shares of stock of a Georgia corporation, such entire estate is subject to Georgia tax. 1948-49 Op. Att'y Gen. p. 664.

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, §§ 1946, 1947, 1964, 1970, 2041 et seq.

ALR. — Succession tax on bonds of domestic corporation owned by estate of nonresident and held at his residence, 8 ALR 863.

Retrospective operation of succession tax, 26 ALR 1461; 66 ALR 404; 109 ALR 858; 114 ALR 518.

Succession tax at domicile of debtor or corporation as to credits or corporate stock belonging to the estate of a nonresident, 42 ALR 354; 60 ALR 565; 65 ALR 1008; 72 ALR 1310; 77 ALR 1411; 139 ALR 1458.

Succession tax in state or country in which personal property (or evidence thereof) belonging to the estate of a nonresident decedent is found, 42 ALR 378; 86 ALR 760.

Succession tax as to stock in foreign corporation belonging to estate of nonresident, 43 ALR 1381.

Attempted waiver or tolling of statute of limitation or nonclaim in respect of indebtedness of decedent's estate as affecting succession tax, 76 ALR 1456.

Situs for purposes of succession tax in respect of intangibles placed by a trustor domiciled in one jurisdiction with a trustee domiciled in another, 96 ALR 674.

Expectant, conditional, or contingent nature of gift or bequest to person in specified relationship to decedent as preventing deduction or exemption in computing estate tax, 112 ALR 266.

Right for purposes of succession or inheritance tax to consider extrinsic agreement to devise or bequeath property, 115 ALR 842.

Questions arising under state legisla-

tion to take advantage of provisions of Federal Revenue Act allowing credits on account of inheritance, legacy, or succession taxes paid to state, 147 ALR 467.

Inheritance tax in respect of contingent remainder or class gift to two or more persons as computable on basis of single entity, 151 ALR 920.

Duty or right of executor or administrator to pay tax on real estate of his decedent, 163 ALR 724.

Burden of estate or succession tax in respect of inter vivos gift or trust, 15 ALR2d 1216.

What law governs apportionment of estate taxes among persons interested in estate, 16 ALR2d 1282.

Inheritance, succession, or estate tax on property covered by power of appointment as affected by location of property, or residence of parties, outside the taxing state or country, 19 ALR2d 1415.

Amount of attorneys' fees deductible in computing succession or estate tax, 62 ALR2d 1148.

Devise or bequest pursuant to testator's contractual obligation as subject to estate, succession, or inheritance tax, 59 ALR3d 969.

Valuation of United States Treasury bonds for state inheritance or estate tax purposes, 62 ALR3d 1272.

Construction and effect of will provisions not expressly mentioning payment of death taxes but relied on as affecting the burden of estate or inheritance taxes, 70 ALR3d 630.

Construction and effect of provisions in nontestamentary instrument relied upon as affecting the burden of estate or inheritance taxes, 70 ALR3d 691.

Valuation of closely held stock for federal estate tax purposes under sec. 2031(b) of Internal Revenue Code of 1954 (26 USCS sec. 2031(b)), and implementing regulations, 22 ALR Fed 31.

48-12-4. Extension of time for filing duplicate return; limit; application; extension for payment of tax; application; termination; payment of tax plus interest upon termination; bond.

(a) In addition to the extension authorized by Code Section 48-12-2, the time for filing a duplicate of the federal estate tax return with the commissioner as required by this chapter may be extended for a period not to exceed six months after the federal filing date, not including any extensions, when a written application requesting the extension is made by the personal representative of the estate to the commissioner on or before the federal filing date, not including any extensions. Any extension of time for filing a duplicate of the federal estate tax return granted by the commissioner shall not operate to extend the time for payment of the taxes imposed by this chapter, except that an extension of time may be separately granted by the commissioner to pay any such tax in accordance with Section 6161 of the Internal Revenue Code as provided in this Code section.

(b) An extension of time for paying the state estate tax or any portion of the tax as required by this chapter may be granted by the commissioner upon the same terms and conditions, in the same manner, and to the same extent as provided for the extension of time to pay the federal estate tax under Section 6161 of the Internal Revenue Code when a written application requesting the extension is made by the personal representative of the estate to the commissioner on or before the federal filing date, not including any extensions. Any extension of time granted under this Code section shall terminate immediately upon the termination of the extension granted by the federal authorities unless earlier terminated by Section 6161 of the Internal Revenue Code. Within 30 days from the notification of termination by the federal authorities, the personal representative shall pay to the commissioner any estate tax due, plus interest on the tax, as provided in this chapter, but without any penalty as provided in this chapter. If an extension of time for the payment of tax or deficiency is granted, the commissioner may require, if he deems it necessary, a bond for the payment of the amount in respect to which the extension is granted, but the bond shall not exceed double the amount with respect to which the extension is granted. The bond shall be executed with surety satisfactory to the commissioner. (Code 1933, § 92-3404.1, enacted by Ga. L. 1976, p. 624, § 4; Code 1933, § 91A-5706, enacted by Ga. L. 1978, p. 309, § 2.)

U.S. Code. — Section 6161 of the Internal Revenue Code, referred to in this Code section, is codified at 26 U.S.C. § 6161.

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, § 2120.

48-12-5. Untimely filing of duplicate return of decedent's estate; assessment of estate for state estate tax; production of evidence; notice to personal representative of amount of tax and interest due.

When a duplicate return is not timely filed with the commissioner by the personal representative of the estate as required by this chapter, the commissioner may appraise and assess the estate for state estate taxes, plus interest due on the taxes, in accordance with the format of the federal estate tax return. The commissioner shall have full power and authority to require the production of all evidence that will enable him to determine the value of all property of the estate subject to the tax imposed by this chapter. The commissioner shall notify the personal representative of the amount of the state estate tax, plus interest on the tax, found to be due from the estate of the decedent. (Ga. L. 1925, p. 63, § 3; Code 1933, § 92-3403; Ga. L. 1976, p. 624, § 3; Code 1933, § 91A-5704, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, § 2041 et seq.

ALR. — Time as of which value of property is to be computed for purpose of inheritance, succession, or estate tax, 160 ALR 1059.

Liability of executor, administrator, trustee, or his counsel, for interest, penalty, or extra taxes assessed against estate because of tax law violations, 47 ALR3d 507.

Valuation of United States Treasury bonds for state inheritance or estate tax purposes, 62 ALR3d 1272.

Valuation of closely held stock for federal estate tax purposes under sec. 2031(b) of Internal Revenue Code of 1954 (26 USCS sec. 2031(b)), and implementing regulations, 22 ALR Fed 31.

48-12-6. Failure to pay timely tax assessed or failure to pay tax on or before filing; issuance of execution; enforcement; interest; penalty.

Whenever the personal representative of any estate fails to pay the amount of tax assessed against the estate, plus interest on the tax, pursuant to Code Section 48-12-5 within 30 days after notice from the commissioner as to the amount to be paid or whenever the personal representative timely files a duplicate return as required by Code

Sections 48-12-2 and 48-12-3 but fails to pay the state estate tax due on or before the filing, the commissioner shall issue an execution against the estate for the amount of the tax, plus interest due on the tax to the date of the issuance of execution and the amount of any penalty as provided in this Code section. The execution shall be enforced by levy and sale and shall bear interest on the amount of the tax at the rate specified in Code Section 48-2-40 from the date of execution until paid. An additional penalty in an amount equal to 10 percent of the amount of the credit for state death taxes as finally determined for federal estate tax purposes shall be paid by the personal representative of the estate to the commissioner for failure to file a duplicate of the federal estate tax return as required by Code Sections 48-12-2 and 48-12-3 or for failure to pay the tax within 30 days after notice from the commissioner as to the amount to be paid. (Ga. L. 1925, p. 63, § 4; Ga. L. 1926, Ex. Sess., p. 15, § 1; Ga. L. 1927, p. 103, § 1; Code 1933, § 92-3404; Ga. L. 1976, p. 624, § 4; Code 1933, § 91A-5705, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 39.)

OPINIONS OF THE ATTORNEY GENERAL

When interest accrues. — Unpaid tax begins bearing interest from the date the return is filed or as of the last date provided for filing the return if no return is submitted. This interest continues to accrue until settlement, unless an execution is issued. 1970 Op. Att'y Gen. No. 70-139.

An additional tax bears interest at the rate set forth in Ga. L. 1937-38, Ex. Sess., p. 77 after notice, unless an execution was issued pursuant to former Code 1933, § 92-3404 (see O.C.G.A. § 48-12-6). 1970 Op. Att'y Gen. No. 70-139.

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes, §§ 52, 161, 191, 223 et seq., 236 et seq.

C.J.S. — 85 C.J.S., Taxation, § 2119 et seq.

ALR. — Right of tax authority to proceed against beneficiary of estate for col-

lection of inheritance, succession, or estate tax, 144 ALR 702.

Liability of executor, administrator, trustee, or his counsel, for interest, penalty, or extra taxes assessed against estate because of tax law violations, 47 ALR3d 507.

CHAPTER 13

SPECIFIC, BUSINESS, AND OCCUPATION TAXES

Article 1		Sec.	
General Provisions			
Sec.			fee; exemptions or reduction in fees for economic development; election of tax by practitioner.
48-13-1.	"In towns or cities" defined [Repealed].	48-13-10.1.	Restriction on authority of counties and municipalities to impose business license fee or occupational tax on wrecker services [Repealed].
48-13-2.	Prohibition of export tax on state products.	48-13-11.	Prohibited criteria or methods in determining amount of occupation tax.
48-13-3.	Prohibition of capitation tax; exception.	48-13-12.	Classification rules for businesses or practitioners with more than one type of service or product.
48-13-4.	Prohibition of tax on activities involving air commerce; exceptions.	48-13-13.	Prohibitions on occupation tax levies by local governments.
48-13-5.	Definitions.	48-13-14.	Levy on business or practitioner with location or office in more than one jurisdiction; methods of allocating gross receipts; information provided by business or practitioner; limits on levies by local governments using criteria for taxation.
48-13-6.	Levy of occupation tax by counties and municipalities on businesses and practitioners of professions and occupations; hearing on tax increase.	48-13-15.	Confidentiality of information provided by business or practitioner; violation; when disclosure allowed.
48-13-7.	Levy of occupation tax by counties and municipalities on businesses and practitioners of professions and occupations with no location or office in state; local law or city charter superseded; laws applicable to levy; tax payable to only one local government; exemption for payers of local occupation taxes out of state.	48-13-16.	Excluded businesses or practitioners; other laws on occupation taxes or registration fees of local governments not repealed.
48-13-8.	Imposition of regulatory fees by counties and municipalities on businesses and practitioners of professions and occupations; classification based on location within or without corporate limits prohibited.	48-13-17.	Levy of license, occupation, or professional tax by counties and municipalities upon real estate brokers.
48-13-9.	Limitation on authority of local government to impose regulatory fee; examples of those which may be subject to fees; individuals and entities not subject to fees; general laws not repealed.	48-13-18.	Levy by municipalities of occupation taxes on licensed businesses, trades, and professions; limitation; prohibition of municipal licensing or taxation of businesses, trades, or operations operating registered vehicles.
48-13-9.1.	Civil action; attorney's fees.		
48-13-10.	Determining amount of occupation tax; criteria for classification of businesses and practitioners; administrative		

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48-13-19. Limitation on levy of employment taxes by municipalities; exception.
48-13-20. Time for payment of fees and taxes.
48-13-20.1. Localities levying occupation tax or regulatory fee to collect certain information from taxpayers; applicability; required information; electronic submission of information; establishment of website or electronic portal; promulgation of rules and regulations.
48-13-21. Penalty for failure to pay tax or fee; time; amount; interest and administrative fees.
48-13-22. Amount of tax due from businesses commenced on or after July 1.
48-13-23. Duty to post state licenses in places of business by persons subject to any special or occupational tax.
48-13-24. Census governing amount of tax or license fee to be paid.
48-13-25. Effect of entry of nulla bona on right of defaulting taxpayer to collect fees for services rendered after entry; effect of taxpayer's payment in full of delinquent tax, on such right.
48-13-26. Issuance of executions against delinquent taxpayers; criminal liability unaffected.
48-13-27. Ordinances and resolutions to be in compliance with amended article.
48-13-28. Disposition of increase in occupation tax revenue; public hearings.
48-13-29. Compliance by counties and municipalities with provisions; electronic or mail application process; payment of fees; establishment of system of permitting not required; plans or specifications by mail.

Article 2

Nonresident Contractors

- 48-13-30. "Contractor" defined.

- Sec.
48-13-31. Registration of nonresident contractors; minimum contract price; reports with respect to liability; registration fees; disposition.
48-13-32. Bonds; procedure; condition precedent to commencing work; amount; blanket or master bonds; amount; registration of completed contracts; fee.
48-13-33. Injunction to prevent execution of contract pending compliance with registration and bond requirements; procedure.
48-13-34. Release of bonds; completion of contract and certification from Commissioner of Labor; automatic release.
48-13-35. Appointment of Secretary of State by nonresident contractor as agent for service of process; time; effect on validity of process as to contractor.
48-13-36. Actions; venue; service and return of summons; procedure; record book kept by Secretary of State; contents.
48-13-37. Preclusion of right to bring action for payment on contract by contractor in violation of article.
48-13-38. Violations of article; penalty.

Article 3

Excise Tax on Rooms, Lodgings, and Accommodations

- 48-13-50. Purpose.
48-13-50.1. Creation of special districts.
48-13-50.2. Definitions.
48-13-51. County and municipal levies on public accommodations charges for promotion of tourism, conventions, and trade shows.
48-13-52. Allowance of percentage of tax collected as deduction to person reporting and paying tax; effect of delinquent payments; rate.
48-13-53. Procedures.
48-13-53.1. Innkeepers; selling or quit-

Sec.

- ting business; withholding of purchase money by purchaser; liability of purchaser for failure to withhold purchase money.
- 48-13-53.2. Innkeepers and taxes.
- 48-13-53.3. Taxes; extensions and returns; failure of innkeeper to make return and pay required tax.
- 48-13-53.4. Records and books.
- 48-13-53.5. Assessments.
- 48-13-53.6. Unpaid tax.
- 48-13-54. Lodge operated under jurisdiction of Department of Natural Resources or other state authority; collection and remittance of tax; use of funds.
- 48-13-55. Facility operated by charitable trust or functionally related business; license fees; limitation on or applicability of tax levies.
- 48-13-56. Annual report to Department of Community Affairs.
- 48-13-56.1. Hotel Motel Tax Performance Review Board; composition; appointments; investigations of complaints; expenses of members.
- 48-13-57. Provisions applying to taxes.
- 48-13-58. Penalties added to tax for failure to pay.
- 48-13-58.1. Criminal penalties for failure to make return or pay taxes.
- 48-13-59. Failure to collect taxes; punishment.
- 48-13-60. Unlawful returns; punishment.
- 48-13-61. Failure to furnish return; punishment.
- 48-13-62. Failure to keep and open records; punishment.
- 48-13-63. Other violations; punishment.

Article 4

Corporate Net Worth Tax

- 48-13-70. Definition.
- 48-13-71. Organizations and companies exempt from corporate net worth tax.
- 48-13-72. Imposition of annual corpo-

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- 48-13-73. Amount of corporate net worth tax; amount for taxable period less than six months.
- 48-13-74. Determination of net worth of corporation; determination by commissioner absent disclosure of true net worth on corporation's books or return.
- 48-13-75. Apportionment of net worth of foreign corporation; formula; determination of receipts derived from business in state; fixing value of capital stock; alternate method.
- 48-13-76. Corporate net worth tax due on first day of tax period; determination of annual tax period; determination of first tax period.
- 48-13-77. Corporate net worth tax return and payment; procedure; combining net worth tax return with state income tax return.
- 48-13-78. Period for payment of tax; effect.
- 48-13-79. Penalties; failure to file timely; extensions; failure to pay timely; interest.

Article 5

Excise Taxes on Rental Motor Vehicles

- 48-13-90. Legislative purpose and intent.
- 48-13-91. Definitions.
- 48-13-92. Special districts.
- 48-13-93. Levy and collection of excise taxes upon motor vehicle rental charges; expenditure of taxes; purpose.
- 48-13-94. Reimbursement for persons collecting tax.
- 48-13-95. Local powers and procedures.
- 48-13-96. Auditor's report.
- 48-13-97. Cash and credit rental charges to be reported on either cash or accrual basis of accounting.

Article 6		Sec.
Excise Tax On Sale Or Use Of Energy		
Sec.		
48-13-110.	Definitions.	48-13-119. Transmittal of returns and remission of taxes due; form of returns; estimated tax liability.
48-13-111.	Creation of special districts.	48-13-120. Extension of time for making returns; penalties and interest; failure to make return.
48-13-112.	Levy and collection of excise tax on sale or use of energy.	48-13-121. Keeping and preservation of records, exemption certificates, and books of account; records to be open to examination; audits and examinations.
48-13-113.	Notice of meeting to determine levy.	48-13-122. Authority to waive penalties.
48-13-114.	Adoption of ordinance levying excise tax within special district.	48-13-123. Failure to make returns or pay full amount of tax; penalties and interest.
48-13-115.	Nonparticipation of county within special district to enter into intergovernmental agreement.	48-13-124. Willful failure to collect tax; misdemeanor; punishment.
48-13-116.	Imposition of excise tax; effective date; limitations.	48-13-125. False or fraudulent return; penalty.
48-13-117.	Procedures for manner of payment and collection; assessment; claim for refund of taxes paid; contingent contract or arrangement for assessment of tax liability prohibited.	48-13-126. Failure or refusal to furnish return; punishment.
48-13-118.	Separate revenue schedule required.	48-13-127. Willful failure to keep records or open records to inspection; punishment.
		48-13-128. Violation of article; punishment.

RESEARCH REFERENCES

ALR. — Liability for license fee or occupation tax of one who has conducted business without required license or payment, 5 ALR 1312; 107 ALR 652.

Validity of privilege or occupation tax on business of severing natural resources from soil, 32 ALR 827; 52 ALR 187; 60 ALR 101.

Power to lay privilege tax on occupation or business of selling or manufacturing product which is itself exempt from tax, 56 ALR 498.

Rights as between dealer or manufacturer and taxing authorities in respect of taxes and license fees illegally received or collected, 93 ALR 1485; 119 ALR 542.

Constitutionality of statute regulating or imposing tax or license fee upon newspapers or magazines, 110 ALR 327.

Intoxicating liquor business as subject

to a tax imposed generally on occupations or business, 117 ALR 686.

Reasonableness of fee required of places where food is served for consumption upon the premises, and basis for fixing amount, 117 ALR 1319.

Occupation or license tax upon business or activities that are in violation of law, 118 ALR 827.

Constitutionality of retroactive statute imposing excise, license, or privilege tax, 146 ALR 1011.

Deductibility of other taxes or fees in computing excise or license taxes, 148 ALR 263; 174 ALR 1263.

Validity, construction, and application of statutes or ordinances prohibiting or regulating automatic vending machines, 151 ALR 1195.

Payment of taxes to prevent closing of, or interference with, business as involun-

tary so as to permit recovery, 80 ALR2d 1040.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Validity and construction of license tax or fee, or business privilege or occupa-

tional tax, on persons renting or leasing out real estate, 93 ALR2d 1136.

Exemption of agricultural activities or occupations from business or occupation license or tax, 38 ALR4th 1074.

Validity of state or municipal tax or license fee upon occupation of practicing law, 50 ALR4th 467.

ARTICLE 1

GENERAL PROVISIONS

Cross references. — Annual occupational license taxes on distillers, brewers, wineries, retail dealers of distilled spirits, beer, wine, or other alcoholic products, §§ 3-4-20, 3-5-20, 3-6-20.

Editor's notes. — Ga. L. 1995, p. 419, § 2, not codified by the General Assembly, provides if a local government repeals, amends, or revises its ordinance or resolution relating to occupation taxes or regulatory fees during the tax year 1995, such a local government is authorized but

not required to allow by ordinance or resolution businesses and practitioners of professions and occupations to pay for the tax year 1995 the lesser of: (1) Taxes and fees computed in accordance with the ordinance or resolution which was in effect on January 1, 1995; or (2) Taxes and fees computed in accordance with the ordinance or resolution which became effective after April 11, 1995, but before January 1, 1996.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 92-3, which was subsequently repealed but was succeeded by provisions in this article, are included in the annotations for this article.

Reasonableness of occupation tax. — Reasonableness of an occupation tax is

not dependent upon the amount of business conducted or on the profit received by a particular individual but is determined by the conditions in the municipality as a whole as justifying the tax upon the business or occupation in question. *National Linen Serv. Corp. v. City of Gainesville*, 181 Ga. 397, 182 S.E. 610 (1935) (decided under former Code 1933, Ch. 92-3).

48-13-1. "In towns or cities" defined.

Reserved. Repealed by Ga. L. 1999, p. 749, § 1, effective July 1, 1999.

Editor's notes. — This Code section was based on Ga. L. 1927, p. 56, § 15; Code 1933, § 92-301; Ga. L. 1935, p. 11,

§ 2; Code 1933, § 91A-6009, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1995, p. 419, § 1.

48-13-2. Prohibition of export tax on state products.

No export tax shall be imposed upon any item manufactured or produced in this state and shipped by the manufacturer or producer for sale outside the state. (Ga. L. 1960, p. 806, § 1; Code 1933, § 91A-6001, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1995, p. 419, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 74. ing and who is a manufacturer under tax laws, 17 ALR3d 7.

ALR. — What constitutes manufactur-

48-13-3. Prohibition of capitation tax; exception.

No county, municipality, or district shall levy or collect any capitation tax whatever, except street tax. (Laws 1842, Cobb's 1851 Digest, p. 1074; Code 1863, § 739; Code 1868, § 806; Ga. L. 1869, p. 162, § 1; Ga. L. 1870, p. 432, § 1; Code 1873, § 809; Code 1882, § 809; Civil Code 1895, § 775; Civil Code 1910, § 1015; Code 1933, § 92-109; Code 1933, § 91A-6002, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 40; Ga. L. 1995, p. 419, § 1.)

Cross references. — Exemption from street tax for members of organized militia, § 38-2-276.

JUDICIAL DECISIONS

Taxes upon professions and occupations of skill are not violative of the law. Burch v. Mayor of Savannah, 42 Ga. 596 (1871).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 19.

C.J.S. — 85 C.J.S., Taxation, §§ 1801, 1802, 1803.

48-13-4. Prohibition of tax on activities involving air commerce; exceptions.

(a) It shall be unlawful for the state or any county, municipality, airport authority, district, or other political subdivision to levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on:

(1) Persons traveling in air commerce, whether on regularly scheduled commercial airlines, chartered air flights, or in privately owned civil aircraft;

(2) The carriage of persons traveling in air commerce; or

(3) The sale of air transportation or on the gross receipts derived from air transportation.

(b) This Code section shall not be construed to prohibit the state or any county, municipality, airport authority, district, or other political subdivision:

(1) From levying or collecting any property, income, franchise, sale, use, or other tax otherwise authorized by law; or

(2) Which owns or operates an airport from levying or collecting reasonable rental charges, landing fees, license fees, permit fees, and other service charges for the use of airport facilities and related facilities from aircraft owners, operators, persons selling or providing goods or services to the owners or operators or to the public, and others, when otherwise allowed by law. (Ga. L. 1973, p. 483, § 1; Code 1933, § 91A-6003, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1995, p. 419, § 1.)

48-13-5. Definitions.

As used in this article, the term:

(1) "Administrative fee" means a component of an occupation tax which approximates the reasonable cost of handling and processing the occupation tax.

(1.1)(A) Except as otherwise provided in subparagraph (B) of this paragraph, "employee" means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for purposes of documenting compensation a form I.R.S. W-2 but not a form I.R.S. 1099.

(B) An individual who performs work under the direction and supervision of one business or practitioner in accordance with the terms of a contract or agreement with another business which recruits such individual is an employee of the business or practitioner which issues to such individual for purposes of documenting compensation a form I.R.S. W-2.

(2)(A) "Gross receipts" means total revenue of the business or practitioner for the period, including without being limited to the following:

(i) Total income without deduction for the cost of goods sold or expenses incurred;

(ii) Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;

(iii) Proceeds from commissions on the sale of property, goods, or services;

(iv) Proceeds from fees charged for services rendered; and

(v) Proceeds from rent, interest, royalty, or dividend income.

(B) Gross receipts shall not include the following:

(i) Sales, use, or excise taxes;

(ii) Sales returns, allowances, and discounts;

(iii) Interorganizational sales or transfers between or among the units of a parent-subsidiary controlled group of corporations, as defined by 26 U.S.C. Section 1563(a)(1), between or among the units of a brother-sister controlled group of corporations, as defined by 26 U.S.C. Section 1563(a)(2), between or among a parent corporation, wholly owned subsidiaries of such parent corporation, and any corporation in which such parent corporation or one or more of its wholly owned subsidiaries owns stock possessing at least 30 percent of the total value of shares of all classes of stock of such partially owned corporation, or between or among wholly owned partnerships or other wholly owned entities;

(iv) Payments made to a subcontractor or an independent agent for services which contributed to the gross receipts in issue;

(v) Governmental and foundation grants, charitable contributions, or the interest income derived from such funds, received by a nonprofit organization which employs salaried practitioners otherwise covered by this chapter, if such funds constitute 80 percent or more of the organization's receipts; and

(vi) Proceeds from sales of goods or services which are delivered to or received by customers who are outside the state at the time of delivery or receipt.

(3) "Location or office" shall include any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office. The renter's or lessee's location which is the site of personal property which is rented or leased from another does not constitute a location or office for the personal property's owner, lessor, or the agent of the owner or lessor. The site of real property which is rented or leased to another does not constitute a location or office for the real property's owner, lessor, or the agent of the owner or lessor unless the real property's owner, lessor, or the agent of the owner or lessor, in addition to showing the property to prospective lessees or tenants and performing maintenance or repair of the property, otherwise conducts the business of renting or leasing the real property at such site or otherwise conducts any other business, profession, or occupation at such site.

(4) "Occupation tax" means a tax levied on persons, partnerships, corporations, or other entities for engaging in an occupation, profes-

sion, or business and enacted by a local government as a revenue-raising ordinance or resolution.

(5) "Practitioners of professions and occupations" shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.

(6) "Regulatory fees" means payments, whether designated as license fees, permit fees, or by another name, which are required by a local government as an exercise of its police power and as a part of or as an aid to regulation of an occupation, profession, or business. The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the local government. A regulatory fee may not include an administrative fee or registration fee. No local government is authorized to require any administrative fee, registration fee, or fee by any other name in connection with a regulatory fee, except an occupation tax, as defined in paragraph (4) of this Code section. Regulatory fees do not include development impact fees as defined by paragraph (8) of Code Section 36-71-2 or other costs or conditions of zoning or land development. (Code 1981, § 48-13-5, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 2; Ga. L. 2003, p. 596, § 1.)

48-13-6. Levy of occupation tax by counties and municipalities on businesses and practitioners of professions and occupations; hearing on tax increase.

(a) Except as to those businesses and practitioners of professions and occupations excluded by subsection (a) of Code Section 48-13-16 and except as to those persons excluded by Code Section 43-12-1, the governing authority of each county is authorized but not required to provide by local ordinance or resolution for the levy, assessment, and collection of occupation tax on those businesses and practitioners of professions and occupations with one or more locations or offices in the unincorporated part of the county and to provide for the punishment of violation of such a local ordinance or resolution. The governing authority of each county is authorized to classify businesses and practitioners of professions and occupations and to assess different taxes on different classes of businesses and practitioners. The governing authority of each county is authorized to provide by local ordinance or resolution for requiring information from businesses and practitioners of professions and occupations doing business in the unincorporated part of the county regarding the site of any location or office and payment of occupation taxes or regulatory fees to other local governments and to provide for the punishment for violation of such a local ordinance or resolution. This article supersedes any provision of local law authorizing such taxes.

(b) Except as to those businesses and practitioners of professions and occupations excluded by subsection (a) of Code Section 48-13-16 and except as to those persons excluded by Code Section 43-12-1, the governing authority of each municipal corporation is authorized but not required to provide by local ordinance or resolution for the levy, assessment, and collection of occupation tax on those businesses and practitioners of professions and occupations which have one or more locations or offices within the corporate limits and to provide for the punishment of violation of such a local ordinance or resolution. The governing authority of each municipal corporation is authorized to classify businesses and practitioners of professions and occupations and to assess different taxes on different classes of businesses and practitioners. The governing authority of each municipal corporation is authorized to provide by local ordinance or resolution for requiring information from businesses and practitioners of professions and occupations doing business within the corporate limits regarding the site of any location or office and payment of occupation taxes or regulatory fees to other local governments and to provide for the punishment for violation of such a local ordinance or resolution. This article supersedes any provision of local law or city charter authorizing such taxes.

(c) After April 11, 1995, any local government shall conduct at least one public hearing before adopting any ordinance or resolution regarding the occupation tax. (Code 1981, § 48-13-6, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1994, p. 366, § 1; Ga. L. 1995, p. 419, § 1; Ga. L. 1996, p. 1268, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, “April 11, 1995” was substituted for “the effective date of this Act” in subsection (c).

Editor’s notes. — Ga. L. 1993, p. 1292, § 7, effective January 1, 1995, renumbered former Code Section 48-13-6 as present Code Section 48-13-17.

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1953, Jan.-Feb. Sess., p. 207, and former Code Section 48-13-5, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Unconstitutional regulation of practice of law. — Occupational tax ordinance levied on professionals and requiring registration and a fee payment at the beginning of each year prior to the transaction of business operated as an unconstitutional precondition on the practice of law. *Sexton v. City of Jonesboro*, 267 Ga. 571, 481 S.E.2d 818 (1997).

Individually-licensed CPA in CPA firm subject to revenue ordinance. — When a licensed certified public accountant is employed full-time by a firm of CPAs and is listed in the telephone directory as a CPA and employs business letterhead or business cards of a firm of certified public accountants, then such a person is practicing public accounting for the purposes of a revenue ordinance imposed pursuant to this section which applied to persons who practice the profession of public accounting. Anything to the contrary in *City of Atlanta v. Day*, 159 Ga. App. 476, 283 S.E.2d 692 (1981) is disapproved. *Mayor of Savannah v. Canady*, 255 Ga. 23, 334 S.E.2d 693 (1985) (decided under former Code Section 48-13-5).

“Public accounting” interpreted. — Statutory term “public accounting” must be interpreted to encompass the performance of any or all of those activities within the specialized competence of persons who are licensed by the state as certified public accountants, even if those persons are performing work which could be done by persons who are not certified public accountants. *City of Atlanta v. Daley*, 257 Ga. 674, 362 S.E.2d 348 (1987) (decided under former Code Section 48-13-5).

“Public” interpreted. — Statutory modifier “public” (in “public accounting”) refers to the profession itself, and not to the specific duties of a single practitioner — whether those duties are performed on behalf of the public generally, or exclusively for a single employer. *City of Atlanta v. Daley*, 257 Ga. 674, 362 S.E.2d 348 (1987) (decided under former Code Section 48-13-5).

Maintenance of “principal office”. — Statutory language limiting assessment of occupational tax to a person who “maintains his principal office” in the taxing municipality evinces no implied intent to tax only those who are responsible for the overall business and who determine the fee to be charged for the professional service. *City of Atlanta v. Shrader*, 185 Ga. App. 691, 365 S.E.2d 449, cert. denied, 185 Ga. App. 909, 365 S.E.2d 449 (1988) (decided under former Code Section 48-13-5).

Licensed embalmers and funeral directors who performed embalming tasks and directed funerals while in the employ of a funeral home “maintained an office” in Atlanta within the meaning of this Code section, even though they did not own or have any interest in the premises of the business and did not take the tax into consideration when determining the charges for services. *City of Atlanta v. Shrader*, 185 Ga. App. 691, 365 S.E.2d 449, cert. denied, 185 Ga. App. 909, 365 S.E.2d 449 (1988) (decided under former Code Section 48-13-5).

Municipal corporations may not tax absent plain and unmistakable authority from state. — Municipal corporations can levy no tax, general or special, upon the inhabitants of the municipi-

ality, or upon property therein, unless the power to do so be plainly and unmistakably granted by the state, and the burden is upon every political subdivision of the state which demands taxes from the people to show authority to exercise it in the manner in which it has been imposed by a valid law of this state. *City of Atlanta v. Gower*, 216 Ga. 368, 116 S.E.2d 738 (1960) (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Authority to collect occupation tax. — First city lacked authority to collect an occupation tax on professional or business activities within a second city’s limits because the first city did not identify any constitutional provision or general law that authorized the first city to levy, assess, and collect an occupation tax on businesses and practitioners that were not located in that city’s limits, and to the extent an agreement between the cities purported to vest in the first city the authority to collect an occupation tax on businesses located within the second city’s limits, the contract was unenforceable; a contract between municipalities, however, is not a general law. *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

Occupation tax may show a relation to the income of the taxpayer although not itself an income tax. *Coolidge v. Mayor of Savannah*, 128 Ga. App. 704, 197 S.E.2d 773 (1973) (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Ordinance imposing tax exceeding limits under this section is ultra vires and void. — General tax ordinance, as amended, of the City of Atlanta, approved March 23, 1960, insofar as the ordinance purports to tax professions licensed by the state in excess of the amount authorized is ultra vires and void. *City of Atlanta v. Gower*, 216 Ga. 368, 116 S.E.2d 738 (1960) (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Taxability requirements. — This section, which permits a municipality to tax certain professions, contains two conditions: (1) the person taxed must be a practitioner of the profession taxed; and (2) such person must maintain an office for the practice of the profession and the

principal office must lie within the municipality levying the tax. *City of Atlanta v. Georgia Soc'y of Professional Eng'rs*, 220 Ga. 62, 137 S.E.2d 41 (1964) (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Municipality is not precluded from levying a tax on attorneys because of the license fee paid to the State Bar of Georgia. *Brown v. City of Atlanta*, 221 Ga. 121, 143 S.E.2d 388 (1965) (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

When attorney is furnished office by an employer as part of the attorney's compensation, the office is nonetheless a principal office and meets the requirements of this section. *Holden v. Bartlett*, 127 Ga. App. 15, 192 S.E.2d 392 (1972) (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Taxation of engineers and architects. — City cannot tax engineers and architects pursuant to this section who, although they hold certificates of registration, work as employees in firms in which the principals who are responsible for the final design decisions also hold certificates. *City of Atlanta v. Georgia Soc'y of*

Professional Eng'rs, 220 Ga. 62, 137 S.E.2d 41 (1964) (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Authority of municipality to collect tax. — Because a second city provided by local ordinance for the levy, assessment, and collection of an occupation tax on businesses and practitioners operating within that city's limits, the second city had the general authority to collect such a tax under O.C.G.A. § 48-13-6(b), and only the second city was authorized to levy, assess, and collect an occupation tax from businesses and practitioners at the airport that were located within the second city's limits to the extent consistent with Ga. Const. 1983, Art. IX, Sec. IV, Para. I, O.C.G.A. § 48-13-6(b), other applicable statutes, and that city's own charter, ordinances, and regulations; *Atlanta, Ga., Charter*, § 7-105(f) is ineffective to the extent it purports to divest College Park, Georgia of the authority to levy, assess, and collect an occupation tax on those businesses and practitioners operating at the airport and within the city limits of College Park. *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1953, Jan.-Feb. Sess., p. 207, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Construction with other provisions as to lawyers. — Ga. L. 1963, p. 70, § 1 should not be construed as repealing by implication so much of this section as relates to lawyers. 1963-65 Op. Att'y Gen. p. 381 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Form of business as affecting taxability. — Law permits a levy upon individuals, whether the individuals practice as sole proprietors or as members of firms. There are, however, highly individual conditions under which the levy could not be made upon employees of firms. 1971 Op. Att'y Gen. No. U71-20 (decided

under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Classification of professions for tax purposes. — Municipality may classify professions for the purpose of levying a license, occupational, or professional tax, provided the classification is reasonable and related to the objective for which it is made. There must be uniformity within the classes. 1970 Op. Att'y Gen. No. U70-74 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Tax may be imposed on persons in part-time service. — When a local government imposes a tax on professional activities, it may impose such tax upon those engaged in part-time service, as well as upon those engaged in full-time employment. 1970 Op. Att'y Gen. No. U70-67 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Counties and municipalities can legally add penalties for failure to pay

the license taxes levied when due. 1957 Op. Att'y Gen. p. 307 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Tax on attorneys not a license to practice. — Municipalities may levy professional taxes upon attorneys. Such a professional tax is not to be confused with a license to practice since a municipal license fee as a condition precedent to practice has been held invalid. 1972 Op. Att'y Gen. No. U72-48 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Pest control business may be taxed wherever business carried on. — Person, business, or company engaged in the pest control business, not being specifically exempt by law, may legally be required to pay a license fee not only in the county where its principal office is located, but also in any county or city in which its business is carried on. 1952-53 Op. Att'y Gen. p. 380 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, § 16 et seq.

ALR. — Validity of state or municipal

tax or license fee upon occupation of practicing law, 50 ALR4th 467.

48-13-7. Levy of occupation tax by counties and municipalities on businesses and practitioners of professions and occupations with no location or office in state; local law or city charter superseded; laws applicable to levy; tax payable to only one local government; exemption for payers of local occupation taxes out of state.

(a) The governing authority of each county is authorized to provide by local ordinance or resolution for the levy, assessment, and collection of occupation tax on those businesses and practitioners of professions and occupations with no location or office in the state in accordance with this Code section and to provide for the punishment of violation of such a local ordinance or resolution if the business or practitioner:

(1) Has one or more employees or agents who exert substantial efforts within the unincorporated part of the county for the purpose of soliciting business or serving customers or clients; or

(2) Owns personal or real property which generates income and which is located in the unincorporated part of the county.

(b) The governing authority of each municipal corporation is authorized to provide by local ordinance or resolution for the levy, assessment, and collection of occupation tax on those businesses and practitioners of professions and occupations with no location or office in the state in accordance with this Code section and to provide for the punishment of violation of such a local ordinance or resolution if the business or practitioner:

(1) Has one or more employees or agents who exert substantial efforts within the corporate limits for the purpose of soliciting business or serving customers or clients; or

(2) Owns personal or real property which generates income and which is located in the corporate limits.

(c) This article supersedes any provisions of local law or city charter authorizing such taxes.

(d) Local governments levying occupation tax according to this Code section shall comply with Code Sections 48-13-10 through 48-13-13, except that: gross receipts of a business or practitioner for purposes of this Code section shall include only those gross receipts reasonably attributable to sales or services in this state; employees shall include only those employees engaged in substantial efforts within this state; and nation-wide profitability ratios shall apply only to types of business transacted within this state.

(e) Businesses and practitioners subject to this Code section shall be required to pay occupation tax to only one local government in this state, the local government for the municipal corporation or county in which the largest dollar volume of business is done or service is performed by the individual business or practitioner.

(f) If a business or practitioner subject to this Code section provides to the local government in this state which is authorized to levy occupation tax on such business or practitioner proof of payment of a local business or occupation tax in another state which purports to tax the business's or practitioner's sales or services in this state, the business or practitioner shall be exempt from local occupation tax in this state. (Code 1981, § 48-13-7, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1.)

Editor's notes. — Ga. L. 1993, p. 1292, § 7, effective January 1, 1995, renum-

bered former Code Section § 48-13-7 as present Code Section 48-13-18.

JUDICIAL DECISIONS

City's occupation tax used same combination of criteria for all taxpayers. — Taxpayer claimed a city's occupation tax did not classify different companies by the same "combination of criteria" as required by O.C.G.A. § 48-13-10(a) as some businesses paid taxes based on the businesses' gross receipts, while others paid based on the number of the busi-

nesses' employees. This claim failed as § 48-13-10(a)(1) and (a)(3) provided that an occupation tax could be calculated using both the number of employees and gross receipts, and the occupation tax was calculated in the same manner for every company. *GMC v. City of Doraville*, 284 Ga. 689, 670 S.E.2d 787 (2008).

48-13-8. Imposition of regulatory fees by counties and municipalities on businesses and practitioners of professions and occupations; classification based on location within or without corporate limits prohibited.

(a) Except as to those persons excluded by Code Section 43-12-1, the governing authority of each county is authorized but not required to provide by local ordinance or resolution for the imposition and collection of regulatory fees on businesses and practitioners of professions and occupations doing business in the unincorporated part of the county and to provide for the punishment of violation of such a local ordinance or resolution. Classifying businesses and practitioners of professions and occupations according to whether such businesses and practitioners have a location within the unincorporated part of the county and imposing and collecting differential regulatory fees on the basis of such a classification is prohibited. This article supersedes any provision of local law authorizing such regulatory fees.

(b) Except as to those persons excluded by Code Section 43-12-1, the governing authority of each municipal corporation is authorized but not required to provide by local ordinance or resolution for the imposition and collection of regulatory fees on businesses and practitioners of professions and occupations doing business within the corporate limits and to provide for the punishment of violation of such a local ordinance or resolution. Classifying businesses and practitioners of professions and occupations according to whether such businesses and practitioners have a location within the corporate limits and imposing and collecting differential regulatory fees on the basis of such a classification is prohibited. This article supersedes any provision of local law or city charter authorizing such fees. (Code 1981, § 48-13-8, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1996, p. 1268, § 2.)

Editor's notes. — Ga. L. 1993, p. 1292, § 7, effective January 1, 1995, renumbered former Code Section 48-13-8 as present Code Section 48-13-19.

48-13-9. Limitation on authority of local government to impose regulatory fee; examples of those which may be subject to fees; individuals and entities not subject to fees; general laws not repealed.

(a) A local government is authorized to require a business or practitioner of a profession or occupation to pay a regulatory fee only if the local government customarily performs investigation or inspection of such businesses or practitioners of such profession or occupation as protection of the public health, safety, or welfare or in the course of enforcing a state or local building, health, or safety code, but no local

government is authorized to use regulatory fees as a means of raising revenue for general purposes; provided that the amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the local government.

(b) Examples of businesses or practitioners of professions or occupations which may be subject to regulatory fees of local governments include, but are expressly not limited to, the following:

- (1) Building and construction contractors, subcontractors, and workers;
- (2) Carnivals;
- (3) Taxicab and limousine operators;
- (4) Tattoo artists;
- (5) Stables;
- (6) Shooting galleries and firearm ranges;
- (7) Scrap metal processors;
- (8) Pawnbrokers;
- (9) Food service establishments;
- (10) Dealers in precious metals;
- (11) Firearms dealers;
- (12) Peddlers;
- (13) Parking lots;
- (14) Nursing homes, assisted living communities, and personal care homes;
- (15) Newspaper vending boxes;
- (16) Modeling agencies;
- (17) Massage parlors;
- (18) Landfills;
- (19) Auto and motorcycle racing;
- (20) Boarding houses;
- (21) Businesses which provide appearance bonds;
- (22) Boxing and wrestling promoters;
- (23) Hotels and motels;
- (24) Hypnotists;

- (25) Handwriting analysts;
- (26) Health clubs, gyms, and spas;
- (27) Fortunetellers;
- (28) Garbage collectors;
- (29) Escort services;
- (30) Burglar and fire alarm installers; and
- (31) Locksmiths.

(c) Examples of businesses and practitioners of professions and occupations which local governments are not authorized to subject to regulatory fees include, but are expressly not limited to, the following:

- (1) Lawyers;
- (2) Physicians licensed under Chapter 34 of Title 43;
- (3) Osteopaths licensed under Chapter 34 of Title 43;
- (4) Chiropractors;
- (5) Podiatrists;
- (6) Dentists;
- (7) Optometrists;
- (8) Psychologists;
- (9) Veterinarians;
- (10) Landscape architects;
- (11) Land surveyors;
- (12) Practitioners of physiotherapy;
- (13) Public accountants;
- (14) Embalmers;
- (15) Funeral directors;
- (16) Civil, mechanical, hydraulic, or electrical engineers;
- (17) Architects;
- (18) Marriage and family therapists, social workers, and professional counselors;
- (19) Dealers of motor vehicles, as defined in paragraph (1) of Code Section 10-1-622;

(20) Owners or operators of bona fide coin operated amusement machines, as defined in Code Section 50-27-70, and owners or operators of businesses where bona fide coin operated amusement machines are available for commercial use and play by the public, provided that such amusement machines have affixed current stickers showing payment of annual permit fees, in accordance with Code Section 50-27-78;

(21) Merchants or dealers as defined in Code Section 48-5-354 as to their deliveries to businesses and practitioners of professions and occupations in areas zoned for commercial use; and

(22) Any other business, profession, or occupation for which state licensure or registration is required by state law, unless the state law regulating such business, profession, or occupation specifically allows for regulation by local governments.

(d) This Code section shall not be construed to repeal other general laws which allow or require regulation of businesses, occupations, or professions by local governments.

(e) For each business, profession, or occupation, local governments are authorized to determine the amount of a regulatory fee imposed in accordance with this article only by one of the following methods:

(1) A flat fee for each business or practitioner of a profession or occupation doing business in the jurisdiction as authorized by Code Section 48-13-8;

(2) A flat fee for each type of permit or inspection requested;

(3) An hourly rate determined by the hourly wage or salary, including employee benefits, of the person or persons assigned to investigate or inspect multiplied by the number of hours estimated for the investigation or inspection to be performed;

(4) An hourly rate as determined by paragraph (3) of this subsection with the addition of other expenses reasonably related to such regulatory activity, such as administrative and travel expenses, multiplied by the number of hours estimated for the investigation or inspection to be performed;

(5) For construction projects that are classified as new construction, the number of square feet of construction or the number of square feet of construction to be served by the system to be installed, in conjunction with and limited by the building valuation data, as established from time to time by the International Code Council or by similar data, and in conjunction with and limited by the hourly rate described in paragraph (3) or (4) of this subsection; or

(6) For construction projects that are classified as renovation and all other construction projects other than those classified as new

construction, the cost of the project in conjunction with and limited by the building valuation data that conforms with the principles and methods established from time to time by the International Code Council or by similar data, and in conjunction with and limited by the hourly rate described in paragraph (3) or (4) of this subsection. (Code 1981, § 48-13-9, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 3; Ga. L. 2006, p. 544, § 2/HB 304; Ga. L. 2011, p. 227, § 28/SB 178; Ga. L. 2013, p. 37, § 2-3/HB 487.)

The 2011 amendment, effective July 1, 2011, inserted “homes, assisted living communities,” in paragraph (b)(14).

The 2013 amendment, effective April 10, 2013, in paragraph (c)(20), substituted “Code Section 50-27-70” for “Code Section 48-17-1” and substituted “Code Section 50-27-78” for “Code Section 48-17-9”.

Editor’s notes. — Ga. L. 1993, p. 1292, § 8, provided for the repeal of former Code Section 48-13-9, relating to county license fees for carnivals and other itinerant shows, effective January 1, 1995. That Code section was based on Ga. L. 1955, Ex. Sess., p. 17, § 1; Code 1933, § 91A-6005, enacted by Ga. L. 1978, p. 309, § 2.

Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitu-

tional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.”

JUDICIAL DECISIONS

Unconstitutional regulation of practice of law. — Occupational tax ordinance levied on professionals and requiring registration and a fee payment at the beginning of each year prior to the transaction of business operated as an unconstitutional precondition on the practice of law. *Sexton v. City of Jonesboro*, 267 Ga. 571, 481 S.E.2d 818 (1997).

Annual renewal charge on Certificates of Public Necessity and Convenience held by taxicab drivers and companies is a regulatory fee, not a tax, and the charge is lawful because the city is authorized to regulate the business of operating taxicabs and vehicles for hire in

which the certificates are used. *Hadley v. City of Atlanta*, 232 Ga. App. 871, 502 S.E.2d 784 (1998).

Excessive fees. — Fact that the county had increased the county’s fees for building permits and other real estate development fees when the county had accumulated a two million dollar surplus from those fees was evidence that the fees may have exceeded the reasonable cost of the county’s regulatory activity, and summary judgment for the county was reversed in a case alleging a violation of O.C.G.A. § 48-13-9. *Home Builders Ass’n of Savannah v. Chatham County*, 276 Ga. 243, 577 S.E.2d 564 (2003).

48-13-9.1. Civil action; attorney's fees.

A civil action to enforce the limitation on regulatory fees set out in Code Section 48-13-9 may be filed after the exhaustion of administrative remedies. The prevailing party in such an action shall be awarded reasonable attorney's fees. (Code 1981, § 48-13-9.1, enacted by Ga. L. 2002, p. 979, § 4A.)

48-13-10. Determining amount of occupation tax; criteria for classification of businesses and practitioners; administrative fee; exemptions or reduction in fees for economic development; election of tax by practitioner.

(a) In determining the amount of occupation tax to be levied on an individual business or practitioner, local governments shall classify all businesses or practitioners by the same criterion or combination of criteria. To assure uniformity, each and every business and practitioner shall be classified by the same criterion or combination of criteria. The criteria used for classification shall be one or more than one of the following criteria:

(1) The number of employees of the business or practitioner as computed on a full-time position basis or full-time position equivalent basis, provided that for the purposes of this computation an employee who works 40 hours or more weekly shall be considered a full-time employee and that the average weekly hours of employees who work less than 40 hours weekly shall be added and such sum shall be divided by 40 to produce full-time position equivalents;

(2) Profitability ratio for the type of business, profession, or occupation as measured by nation-wide averages derived from statistics, classifications, or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service, or successor agencies of the United States;

(3) Gross receipts of the business or practitioner in combination with the profitability ratio for the type of business, profession, or occupation as measured by nation-wide averages derived from statistics, classifications, or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service, or successor agencies of the United States; or

(4) A flat fee classification which is applied uniformly to all businesses and practitioners of professions and occupations, so that each business or practitioner pays the same amount of tax for each office or location.

(b) Local governments which classify businesses and practitioners by the criterion described in paragraph (3) of subsection (a) of this Code

section are authorized but not required to limit the geographic area in which gross receipts shall be taxed to that local government's jurisdiction.

(c) Local governments which classify by the criteria described in paragraph (2) or (3) of subsection (a) of this Code section shall rank the businesses and practitioners according to the profitability ratio described in paragraph (2) of subsection (a) of this Code section. After such ranking, the local government shall establish profitability classifications which do not overlap before setting one or more rates of taxation for each classification. Such local governments are not authorized to apply to any classification a rate of taxation greater than the rate applied to another classification which includes a business or practitioner with a higher profitability ratio, except that local governments are authorized but not required to apply different rates of taxation within the same profitability classification by dollar range of gross receipts. Local governments using such different rates of taxation within the same profitability classification shall use the same dollar ranges of gross receipts for each profitability classification and shall not apply to any business or practitioner a rate of taxation greater than the rate applied to the same dollar range of gross receipts in another classification which includes a business or practitioner with a higher profitability ratio.

(d) Local governments which classify by the criterion described in paragraph (1) of subsection (a) of this Code section are authorized but not required to adopt more than one rate of taxation per employee.

(e) The occupation tax may include an administrative fee.

(f)(1) Notwithstanding any other provision of this article, local governments may by ordinance or resolution provide for an exemption or reduction in occupation tax or a credit against occupation tax owed to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting, encouraging, or maintaining selected types of businesses or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious.

(2) Exemptions or reductions in occupation tax pursuant to paragraph (1) of this subsection may include but shall not be limited to the following:

(A) Absolute dollar amount limitations on the total amount of tax, either by criterion or combination of criteria used for classification or for businesses and practitioners, provided that a jurisdiction which provides an absolute dollar amount limitation on the total amount of tax shall levy and collect such maximum tax only

once on each business entity or practitioner even if a business or practitioner has more than one office or location within the jurisdiction;

(B) Tax credits for the retention or creation of jobs, or for jobs of a specific description, including but not limited to entry level jobs or jobs with compensation of a specified range;

(C) Tax credits for other taxes paid to the local government, including but not limited to ad valorem taxes;

(D) A tax exemption or a lower rate of taxation for sales to customers outside the jurisdiction of the local government;

(E) A credit or rebate to businesses or practitioners who paid occupation taxes in the previous year;

(F) A limitation on the dollar or percentage amount of increase in tax from a base year to a subsequent year, provided that the limitation is made applicable to new businesses or practitioners by imputing the gross receipts, profitability ratio, or number of employees of the subsequent year to the base year in calculating tax for the base year, tax for the subsequent year, and the increase in tax; and

(G) A credit or reduction as an adjustment for seasonal fluctuations in the number of employees, other fluctuations in the number of employees, increases or decreases in the number of employees, or temporary employees.

(g) Practitioners of professions and occupations who are listed in paragraphs (1) through (18) of subsection (c) of Code Section 48-13-9 shall elect as their entire occupation tax one of the following:

(1) The occupation tax resulting from application of the other provisions of this article; or

(2) A fee to be set by the local government, not to exceed \$400.00 per practitioner who is licensed to provide the service, such tax to be paid at that practitioner's office or location; provided, however, that a practitioner paying according to this paragraph shall not be required to provide information to the local government relating to the gross receipts of the business or practitioner.

(h) Notwithstanding any other provision in this article, any local government levying an occupation tax is authorized to request payment of such occupation tax from and accept payment from a partnership, corporation, or other business entity composed of practitioners subject to the election set out in subsection (g) of this Code section for each such practitioner. (Code 1981, § 48-13-10, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 4.)

Editor's notes. — Ga. L. 1993, p. 1292, § 8, provided for the repeal of former Code Section 48-13-10, relating to unlawful operation of an itinerant show without a license, effective January 1, 1995. That

Code section was based on Ga. L. 1955, Ex. Sess., p. 17, § 2; Code 1933, § 91A-9928, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

City's occupation tax used same combination of criteria for all taxpayers. — Taxpayer claimed a city's occupation tax did not classify different companies by the same "combination of criteria" as required by O.C.G.A. § 48-13-10(a) as some businesses paid taxes based on the businesses' gross receipts, while others paid based on the number of employees.

This claim failed as § 48-13-10(a)(1) and (a)(3) provided that an occupation tax could be calculated using both the number of employees and gross receipts, and the occupation tax was calculated in the same manner for every company. *GMC v. City of Doraville*, 284 Ga. 689, 670 S.E.2d 787 (2008).

48-13-10.1. Restriction on authority of counties and municipalities to impose business license fee or occupational tax on wrecker services.

Repealed by Ga. L. 1993, p. 1292, § 8, effective January 1, 1995.

Editor's notes. — This Code section was based on Ga. L. 1981, p. 654, §§ 1-3.

48-13-11. Prohibited criteria or methods in determining amount of occupation tax.

In determining the amount of occupation tax to be levied on an individual business or practitioner, local governments shall not use the following criteria or methods:

(1) Dividing a business into its constituent parts and imposing a separate occupation tax on each part or portion of the business, except that businesses or practitioners with more than one type of activity or product shall be taxed in accordance with Code Section 48-13-12;

(2) The size or square footage of the space occupied by the business or practitioner; or

(3) Any criterion other than those described in Code Section 48-13-10. (Code 1981, § 48-13-11, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1.)

Editor's notes. — Ga. L. 1993, p. 1292, § 9, effective January 1, 1995, renum-

bered former Code Section 48-13-11 as present Code Section 48-13-20.

48-13-12. Classification rules for businesses or practitioners with more than one type of service or product.

For businesses or practitioners with more than one type of service or product, the following classification rules shall apply:

- (1) Local governments which do not use the criterion described in paragraph (3) of subsection (a) of Code Section 48-13-10 shall classify the business or practitioner for occupation tax purposes according to the dominant service or product, unless such local governments use only the criterion described in paragraph (4) of subsection (a) of Code Section 48-13-10; and
- (2) Local governments which use the criterion described in paragraph (3) of subsection (a) of Code Section 48-13-10 shall set out in their local ordinances or resolutions for occupation taxes whether the local government will:
 - (A) Classify the entire gross receipts by dominant service or product; or
 - (B) Apportion the gross receipts by category of service or product in proportion to the gross receipts generated by each service or product, taxing each portion of the gross receipts according to the profitability ratio for that particular type of business and adding the tax for all portions to arrive at the total occupation tax. (Code 1981, § 48-13-12, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1.)

Editor's notes. — Ga. L. 1993, p. 1292, § 9, effective January 1, 1995, renumbered former Code Section 48-13-12 as present Code Section 48-13-21.

48-13-13. Prohibitions on occupation tax levies by local governments.

- Local governments are not authorized to:
- (1) Require a business or practitioner to pay more than one occupation tax for each office or location, except that businesses or practitioners with multiple services or products shall be taxed in accordance with Code Section 48-13-12;
 - (2) Levy occupation tax on more than 100 percent of the total gross receipts of the business or practitioner, when occupation taxes of all local governments are added together;
 - (3) Levy occupation tax on any practitioner whose office is maintained by and who is employed in practice exclusively by the United States, the state, a municipality or county of the state, or instrumentalities of the United States, the state, or a municipality or county of the state;

(4) Require the payment of a fee by whatever name in any amount by a business or practitioner for the cost of ascertaining whether such a business or practitioner has paid occupation tax to another local government; or

(5) Levy any occupation tax, regulatory fee, or administrative fee on any state or local authority, nonprofit organization, or vendor operating under a contract with a tax-exempt agricultural fair, as that term is defined in Code Section 2-2-8. (Code 1981, § 48-13-13, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1996, p. 1268, § 3; Ga. L. 1997, p. 143, § 48.)

Editor's notes. — Ga. L. 1993, p. 1292, § 9, effective January 1, 1995, renumbered former Code Section 48-13-13 as present Code Section 48-13-22.

JUDICIAL DECISIONS

Local authority explained. — In enacting O.C.G.A. § 48-13-13, the General Assembly did not intend the term “local authority” in O.C.G.A. § 48-13-13(5) to refer to a local government corporation, that is, a municipality or a county, but only to a local authority in the narrower sense, and therefore, § 48-13-13(5) does not prohibit one municipality from levying, assessing, and collecting an occupation tax from another municipality that conducts proprietary (nongovernmental) revenue-generating activities within the geographical corporate limits of the first municipality; use of the phrase “local authority” shows that the General Assembly views a local government, that is, a county or municipality, and a local authority as distinct categories, and a “local authority” means an agency created by one or more local governments to carry out certain discrete governmental functions for a local purpose. *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

City was not a local authority. — Trial court erred in determining that a first city was a local authority that was statutorily exempt from liability to a second city for any occupation tax for the first city's proprietary business operations because the first city was not a local authority within the meaning of O.C.G.A. § 48-13-13(5), such that the second city was prohibited from taxing the first city; in enacting O.C.G.A. § 48-13-13, the General Assembly did not intend the term “local authority” in § 48-13-13(5) to refer to a local government corporation, that is, a municipality or a county, but only to a local authority in the narrower sense, and therefore, § 48-13-13(5) does not prohibit one municipality from levying, assessing, and collecting an occupation tax from another municipality that conducts proprietary (nongovernmental) revenue-generating activities within the geographical corporate limits of the first municipality. *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

48-13-14. Levy on business or practitioner with location or office in more than one jurisdiction; methods of allocating gross receipts; information provided by business or practitioner; limits on levies by local governments using criteria for taxation.

(a) In levying occupation tax upon a business or practitioner with a location or office situated in more than one jurisdiction, including businesses or practitioners with one or more locations or offices in

Georgia and one or more locations outside the state, local governments which use the criterion described in paragraph (3) of subsection (a) of Code Section 48-13-10 shall allocate the gross receipts as defined in paragraph (2) of Code Section 48-13-5 of the business or practitioner for occupation tax purposes in accordance with one of the following methods:

(1) Where the business or practitioner can reasonably allocate the dollar amount of gross receipts of the business or practitioner to one or more of the locations or offices on the basis of product manufactured in that location or office or the sales or other services provided in that location or office, each local government is authorized to tax the gross receipts generated by the location or office within the jurisdiction of the local government; or

(2) Where the business or practitioner cannot reasonably allocate the dollar amount of gross receipts among multiple locations or offices, the business or practitioner shall divide the gross receipts reported to all local governments in this state by the number of locations or offices of the business or practitioner which contributed to the gross receipts reported to any local government in this state, and shall allocate an equal percentage of such gross receipts of the business or practitioner to each location or office.

(b) In no instance shall the sum of the portions of the total gross receipts of a business or practitioner taxed by all local governments exceed 100 percent of the total gross receipts of the business or practitioner.

(c) In the event of a dispute between the business or practitioner and the local government as to the allocation under this Code section, the business or practitioner shall have the burden of proof as to the reasonableness of this allocation.

(d) Upon request, businesses or practitioners with a location or office situated in more than one jurisdiction shall provide to any local government authorized to levy an occupation tax upon such business or practitioner the following:

(1) Financial information necessary to allocate the gross receipts of the business or practitioner; and

(2) Information relating to the allocation of the business's or practitioner's gross receipts by other local governments.

(e) When more than one local government levies occupation tax on a business or practitioner which has locations encompassed by more than one local government and the local governments use different criteria for taxation in accordance with subsection (a) of Code Section 48-13-10, local governments which use the criterion described in paragraph (3) of

subsection (a) of Code Section 48-13-10 are not authorized to tax any greater proportion of the gross receipts than authorized by subsection (a) of this Code section, and local governments which use the number of employees as a criterion for taxation are authorized to tax the number of employees who are employed within the local government's geographic jurisdiction. In the case of an employee who works for the same business or practitioner in more than one municipal corporation or county, the municipal corporation or county in which the employee works for the longest period of time within the calendar year shall be authorized to count the individual as an employee who is employed within the local government's geographic jurisdiction for purposes of occupation tax. (Code 1981, § 48-13-14, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 5.)

Editor's notes. — Ga. L. 1993, p. 1292, § 9, effective January 1, 1995, renumbered former Code Section 48-13-14 as present Code Section 48-13-23.

48-13-15. Confidentiality of information provided by business or practitioner; violation; when disclosure allowed.

(a) Except as provided in subsection (c) of this Code section, information on gross receipts received by a business or practitioner of an occupation or profession provided to a local government for the purpose of determining the amount of occupation tax for the business or practitioner is confidential and exempt from inspection or disclosure under Article 4 of Chapter 18 of Title 50.

(b) Violation of the confidentiality provision of subsection (a) of this Code section shall be unlawful and upon conviction shall be punished as a misdemeanor.

(c) Information on gross receipts received by a business or practitioner of an occupation or profession provided to a local government for the purpose of determining the amount of occupation tax for the business or practitioner may be disclosed to the governing authority of another local government for occupation tax purposes or pursuant to court order or for the purpose of collection of occupation tax or prosecution for failure or refusal to pay occupation tax.

(d) In the event a taxpayer completes one or more forms in order to comply with a local government's ordinance or resolution imposing either an occupation tax or a regulatory fee and any such form fails to disclose the social security number or the appropriate federal or state taxpayer identification number, or other identification numbers, if required by the local government, such omission shall be reported in a timely manner to the state revenue commissioner. (Code 1981, § 48-13-15, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 6.)

Editor's notes. — Ga. L. 1993, p. 1292, § 9, effective January 1, 1995, renumbered former Code Section 48-13-15 as present Code Section 48-13-24.

RESEARCH REFERENCES

ALR. — Recovery of damages under § 7431(c)(1)(B) of Internal Revenue Code (26 USCA § 7431(c)(1)(B)) based on improper release of confidential tax return information, 154 ALR Fed. 537.

48-13-16. Excluded businesses or practitioners; other laws on occupation taxes or registration fees of local governments not repealed.

(a) The following businesses or practitioners shall be excluded from occupation tax, registration fees, or regulatory fees under the provisions of this article but shall be subject to taxation and regulation as otherwise provided by general law and municipal charters:

(1) Those businesses regulated by the Public Service Commission and the Department of Public Safety;

(2) Those electrical service businesses organized under Chapter 3 of Title 46; and

(3) Any farm operation for the production from or on the land of agricultural products, but not including any agribusiness.

(b) This article shall not be construed to repeal other provisions of general law relating to local governments' occupation tax, registration fees, or regulatory fees for businesses or practitioners of professions or occupations. (Code 1981, § 48-13-16, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1994, p. 366, § 2; Ga. L. 1995, p. 419, § 1; Ga. L. 2012, p. 580, § 24/HB 865; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2012 amendment, effective July 1, 2012, added "and the Georgia Department of Public Safety" at the end of paragraph (a)(1).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, in paragraph

(a)(1), deleted "Georgia" preceding "Public Service Commission" and preceding "Department of Public Safety".

Editor's notes. — Ga. L. 1993, p. 1292, § 9, effective January 1, 1995, renumbered former Code Section 48-13-16 as present Code Section 48-13-25.

48-13-17. Levy of license, occupation, or professional tax by counties and municipalities upon real estate brokers.

(a) No county or municipal corporation shall levy or collect any fixed amount license, occupation, or professional tax upon real estate brokers, except at the place where any such real estate broker shall maintain a principal or branch office. The license, occupation, or professional tax shall permit the broker and the broker's affiliated associate brokers and salespersons to engage in all of the brokerage

activities described in Code Section 43-40-1 without further licensing or taxing other than the state licenses issued pursuant to Chapter 40 of Title 43. No additional license, occupation, or professional tax shall be required of the broker's affiliated associate brokers or salespersons; provided, however, that, subject to the limitations of subsection (b) of this Code section, a municipality or county which levies a general occupation or business license tax on a gross receipts basis shall have the power to levy and collect an occupation, license, or professional tax upon real estate brokers transacting business within the boundaries of the taxing jurisdiction, which tax shall be based upon gross receipts derived from transactions with respect to property located within the boundaries of the taxing jurisdiction.

(b) A municipal corporation may impose an occupation, license, or professional tax upon real estate brokers based upon gross receipts only for real estate transactions with respect to property located within its corporate limits and a county governing authority may impose such a tax based upon gross receipts only for real estate transactions with respect to property located in the unincorporated area of the county. (Code 1933, § 84-1425, enacted by Ga. L. 1977, p. 344, § 1; Ga. L. 1990, p. 644, § 1; Code 1981, § 48-13-6; Code 1981, § 48-13-17, as redesignated by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1.)

48-13-18. Levy by municipalities of occupation taxes on licensed businesses, trades, and professions; limitation; prohibition of municipal licensing or taxation of businesses, trades, or operations operating registered vehicles.

(a) When otherwise authorized by law to levy occupation taxes on businesses, trades, and professions, a municipality shall be permitted to levy the taxes on businesses, trades, and professions which are licensed by or registered with the state. This Code section shall not be construed to repeal any express limitations on such municipal authority contained in general law.

(b) Nothing contained in this Code section shall be construed to authorize the municipal licensing or taxation of businesses, trades, or occupations operating motor vehicles required to be registered with the Department of Public Safety of this state. (Code 1933, § 91A-6015, enacted by Ga. L. 1980, p. 1175, § 1; Code 1981, § 48-13-7; Code 1981, § 48-13-18, as redesignated by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 2012, p. 580, § 25/HB 865.)

The 2012 amendment, effective July 1, 2012, substituted "Department of Public Safety" for "Public Service Commission" near the end of subsection (b).

48-13-19. Limitation on levy of employment taxes by municipalities; exception.

- (a) Except as may be authorized by general law, no municipality may levy any tax upon an individual for the privilege of working within or being employed within the limits of the municipality.
- (b) Nothing contained in this Code section shall be construed to prohibit a municipality, when otherwise authorized, from levying any form of tax being levied by any municipality in this state on January 1, 1980. (Code 1933, § 91A-6014, enacted by Ga. L. 1980, p. 1298, § 1; Code 1981, § 48-13-8; Code 1981, § 48-13-19, as redesignated by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1.)

RESEARCH REFERENCES

ALR. — Eligibility for relief from federal employment taxes under § 530 of Internal Revenue Code (26 USCA § 3401 note), 149 ALR Fed. 627.

48-13-20. Time for payment of fees and taxes.

- (a) All occupation taxes authorized by this chapter, except as otherwise specifically provided, shall be due and payable annually within 30 days following January 1, or such other date specified in the local government ordinance imposing the taxes. In the event that any person commences business on any date after the date specified in this Code section or in the local government ordinance imposing the tax, the tax shall be due and payable 30 days following the commencement of the business.
- (b) Regulatory fees authorized by this chapter shall be paid before commencing business or the practice of a profession or occupation as a condition precedent for transacting business, or practicing a profession or occupation.
- (c) Regulatory fees may be paid after commencing business or the practice of a profession or occupation when:
- (1) The work done or services provided are necessary for the health, comfort, or safety of one or more individuals or protection of property. This paragraph shall apply to, but not be limited to, the repair, service, or installation of heating, ventilation, and air conditioning equipment or systems;
 - (2) The work done or services provided have no adverse effect on any other person;
 - (3) Regulatory fees are tendered to the local government within two business days after commencing business or the practice of a

profession or occupation and any and all required inspections are made in order to ensure compliance with applicable codes; and

(4) The work is commenced or the services are provided within 24 hours of receiving the request for such work or service and it is not possible for the person conducting the work or providing the service to obtain a permit prior to commencing due to the hours of operation of the local government's offices. (Ga. L. 1935, p. 11, § 21; Code 1933, § 91A-6007, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-13-11; Code 1981, § 48-13-20, as redesignated by Ga. L. 1993, p. 1292, § 9; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 7; Ga. L. 2006, p. 544, § 3/HB 304.)

48-13-20.1. Localities levying occupation tax or regulatory fee to collect certain information from taxpayers; applicability; required information; electronic submission of information; establishment of website or electronic portal; promulgation of rules and regulations.

(a) The provisions of this Code section shall apply only in a municipality or county levying an occupation tax or regulatory fee under this article and shall apply only upon the adoption of a resolution of such governing authority consenting to the applicability of this Code section.

(b) Following the adoption of the resolution provided for in subsection (a) of this Code section, any person who performs any business, occupation, or profession and who is subject to an occupation tax or regulatory fee under this article shall be subject to the requirements of this Code section. Such person shall provide to the municipality or county levying an occupation tax or regulatory fee under this article, at the time such occupation tax or regulatory fee is due and payable, the information required under subsection (c) of this Code section. Such municipality or county shall provide written notice to such person that such information, or the refusal to provide such information, shall be provided to the department. The failure or refusal of such person to provide such information shall not toll or extend the time of payment established for such occupation tax or regulatory fee under Code Section 48-13-20.

(c) The following information shall be requested from such person by such municipality or county:

(1) The legal name of such business and any associated trade names;

(2) The mailing address of such business and the actual physical address of each location of such business if different than the mailing address; and

(3) The sales and use tax identification number assigned to such business by the department if such business is required to have such number pursuant to Article 1 of Chapter 8 of this title.

(d) Within 30 days of the time of payment of such occupation tax or regulatory fee under Code Section 48-13-20, the municipality or county collecting the occupation tax or regulatory fee and the information authorized under subsection (c) of this Code section from such person shall submit electronically to the department the information received from such person under subsection (c) of this Code section. Such municipality or county shall also submit any applicable North American Industry Classification System Code number or numbers electronically to the department.

(e) The department shall establish and maintain an appropriate website or electronic portal for the submission by municipalities and counties of the information required by this Code section.

(f) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-13-20.1, enacted by Ga. L. 2010, p. 804, § 1/HB 1093.)

48-13-21. Penalty for failure to pay tax or fee; time; amount; interest and administrative fees.

(a) Should any special, occupation, or sales tax or license fee imposed by this chapter remain due and unpaid for 90 days from the due date of the tax or fee, the person liable for the tax or fee shall be subject to and shall pay a penalty of 10 percent of the tax or fee due.

(b) Local governments are authorized to provide in their ordinances for interest on delinquent occupation taxes, regulatory fees, and administrative fees at a rate not to exceed 1.5 percent per month. (Ga. L. 1931, Ex. Sess., p. 76, § 6; Code 1933, § 92-2105; Ga. L. 1935, p. 11, § 16; Code 1933, § 91A-6011, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-13-12; Code 1981, § 48-13-21, as redesignated by Ga. L. 1993, p. 1292, § 9; Ga. L. 1995, p. 419, § 1.)

48-13-22. Amount of tax due from businesses commenced on or after July 1.

When any person commences business on or after July 1 in any year, the business or occupation tax for the remaining portion of the year shall be 50 percent of the tax imposed for the entire year, except that (1) local governments which tax according to the criterion described in paragraph (3) of subsection (a) of Code Section 48-13-10 are authorized to levy their customary rate on the gross receipts of the business or practitioner from the commencement of the business; (2) the adminis-

trative fee authorized as a component of an occupation tax by subsection (e) of Code Section 48-13-10 shall not be reduced; and (3) a practitioner of a profession or occupation who elects as his or her occupation tax the amount described in paragraph (2) of subsection (g) of Code Section 48-13-10 shall receive no reduction in such amount. (Ga. L. 1935, p. 11, § 20; Code 1933, § 91A-6008, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-13-13; Code 1981, § 48-13-22, as redesignated by Ga. L. 1993, p. 1292, § 9; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 7.)

48-13-23. Duty to post state licenses in places of business by persons subject to any special or occupational tax.

Each person subject to any special or occupation tax who is also licensed by the state shall post the state license in a conspicuous place in the licensee's place of business and shall keep the license there at all times while the license remains valid. (Ga. L. 1924, p. 183, § 2; Code 1933, § 92-302; Code 1933, § 91A-6006, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-13-14; Code 1981, § 48-13-23, as redesignated by Ga. L. 1993, p. 1292, § 9; Ga. L. 1995, p. 419, § 1.)

48-13-24. Census governing amount of tax or license fee to be paid.

In any provision of this chapter where population controls the amount of tax or license fee to be paid, the most recent United States decennial census shall govern. (Ga. L. 1927, p. 56, § 15; Code 1933, § 92-301; Ga. L. 1935, p. 11, § 2; Code 1933, § 91A-6009, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-13-15; Code 1981, § 48-13-24, as redesignated by Ga. L. 1993, p. 1292, § 9; Ga. L. 1995, p. 419, § 1.)

48-13-25. Effect of entry of nulla bona on right of defaulting taxpayer to collect fees for services rendered after entry; effect of taxpayer's payment in full of delinquent tax, on such right.

When a nulla bona entry has been entered by proper authority upon an execution issued by the tax collector or tax commissioner against any person defaulting on a special tax, the person against whom the entry is made shall not be allowed or entitled to have or collect any fees or charges whatever for services rendered after the entry of the nulla bona. If, at any time after the entry of nulla bona has been made, the person against whom the execution issues pays the tax in full together with all interest and costs accrued on the tax, the person may collect any fees and charges due him or her as though he or she had never defaulted in the payment of the tax. (Ga. L. 1896, p. 37, § 3; Civil Code

1910, § 1157; Code 1933, § 92-2109; Code 1933, § 91A-6013, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-13-16; Code 1981, § 48-13-25, as redesignated by Ga. L. 1993, p. 1292, § 9; Ga. L. 1995, p. 419, § 1.)

48-13-26. Issuance of executions against delinquent taxpayers; criminal liability unaffected.

In addition to the other remedies available to the state, counties, and municipalities for the collection of special taxes, occupation taxes, and regulatory fees due the state, counties, and municipalities from persons subject to the tax or fee who fail or refuse to pay the tax or fee, the officer charged with the collection of the tax or fee shall issue executions against the delinquent taxpayers for any or all of the following: the amount of the taxes or fees due when the taxes or fees become due; any penalty imposed by subsection (a) of Code Section 48-13-21; and any interest imposed by the local ordinance in accordance with subsection (b) of Code Section 48-13-21. The court of competent jurisdiction for the enforcement of ordinances of the local government which has levied the tax or imposed the fee may, if authorized by the local ordinance, impose a civil fine for failure to pay the occupation tax or regulatory fee. Such a civil fine shall not exceed \$500.00 and may be enforced by the contempt power of the court. (Ga. L. 1903, p. 17, §§ 1, 2; Civil Code 1910, §§ 1152, 1153; Code 1933, §§ 92-2107, 92-2108; Ga. L. 1935, p. 11, § 21; Code 1933, § 91A-6012, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-13-17; Ga. L. 1990, p. 644, § 2; Code 1981, § 48-13-26, as redesignated by Ga. L. 1993, p. 1292, § 9; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 7.)

48-13-27. Ordinances and resolutions to be in compliance with amended article.

(a) The governing authority of any county or municipal corporation which enacted an ordinance or resolution relating to occupation taxes or regulatory fees pursuant to the provisions of this article and other general law effective January 1, 1995, which ordinance or resolution is in effect on April 11, 1995, shall enact an ordinance or resolution in compliance with the provisions of this article, on or after April 11, 1995.

(b) Subsection (a) of this Code section shall not impair the right of any county or municipal corporation:

(1) To determine the content of such an ordinance or resolution relating to occupation taxes or regulatory fees, provided that such ordinance or resolution complies with general law; and

(2) To elect not to impose occupation taxes or regulatory fees. (Code 1981, § 48-13-27, enacted by Ga. L. 1995, p. 419, § 1; Ga. L. 2002, p. 415, § 48.)

48-13-28. Disposition of increase in occupation tax revenue; public hearings.

In any year when revenue from occupation taxes is greater than revenue from occupation taxes for the preceding year for a local government, the local government shall hold one or more public hearings as a part of the process of determining how to use the additional revenue. (Code 1981, § 48-13-28, enacted by Ga. L. 1995, p. 419, § 1.)

48-13-29. Compliance by counties and municipalities with provisions; electronic or mail application process; payment of fees; establishment of system of permitting not required; plans or specifications by mail.

(a) Every county and municipality that requires a permit for the installation, replacement, or improvement of heating, ventilation, air-conditioning, plumbing, or electrical equipment or systems within a building or structure within its jurisdiction shall ensure that the permit process of such county or municipality conforms to the provisions of this Code section.

(b) In addition to applying in person for a heating, ventilation, air-conditioning, plumbing, or electrical permit, every county and municipality subject to this Code section shall provide a method by which an applicant can apply for a heating, ventilation, air-conditioning, plumbing, or electrical permit by mail or through electronic media without having to apply in person. Acceptable electronic media includes, but is not limited to, facsimile transmission. Electronic mail and Internet websites also may be used at the discretion of the county or municipality. Once the application is received, the county or municipality may approve or disapprove the permit according to the rules, regulations, and ordinances of the county or municipality. A county or municipality may require the applicant to appear in person when such applicant applies for a permit for the first time with such county or municipality. Applications sent by mail shall include payment by check or money order for any fees, unless the amount of such fees is not available from the county or municipality. Applicants using the mail to make applications shall bear the responsibility of any delays in the county or municipality receiving such applications.

(c) In addition to paying by cash any fees for the issuance of a heating, ventilation, air-conditioning, plumbing, or electrical permit, every county and municipality subject to this Code section may provide for the payment of such fees through the use of one or more of the following methods and may add an additional fee, not to exceed the actual cost to the county or municipality, for the cost of providing for and processing such payments:

- (1) By use of a check;
- (2) By use of a money order;
- (3) By use of a major credit card;
- (4) By use of a bank draft or wire transfer;

(5) By the establishment of an account by the applicant with the county or municipality which the county or municipality can debit for the payment of the fees; or

(6) By the establishment of a delayed or deferred payment method, to be established by a written policy of the county or municipality, by which the applicant can mail or deliver payment for the fees within a reasonable period of time.

(d) If an applicant's payment of the fee is dishonored by the financial institution on which it is drawn, the county or municipality shall notify the applicant and give the applicant a reasonable period of time, which shall be not less than three business days after receiving notice, to pay the fee, including any interest and penalties, and any additional fees or charges incurred by the county or municipality as a result of the dishonor. If the applicant does not pay the fee within the specified period of time, the county or municipality may invalidate the permit and assess fines and other penalties on the applicant. Such invalidation shall result in the permit being a total nullity and may subject the applicant to all penalties for failure to have a proper permit for the construction, renovation, installation, replacement, or improvement of the building or structure. In addition, if an applicant's payment of the delayed or deferred permit fees is dishonored, the county or municipality may revoke or suspend the applicant's authority to utilize such payment method in future applications.

(e) Nothing in this Code section shall require any county or municipality to establish a system of permits for the construction, renovation, installation, replacement, or improvement of a building or structure.

(f) Nothing in this Code section shall require any county or municipality to accept plans or specifications by mail or electronic means. If a county or municipality chooses to accept plans or specifications by mail or electronic means, the county or municipality may specify the format in which such plans or specifications shall be submitted. Failure to submit such plans or specifications in the format required by the county or municipality shall be a basis for rejecting such plans or specifications by the county or municipality. (Code 1981, § 48-13-29, enacted by Ga. L. 2004, p. 772, § 1; Ga. L. 2005, p. 60, § 48/HB 95.)

ARTICLE 2

NONRESIDENT CONTRACTORS

Law reviews. — For article, "Owner Defenses Under Georgia's Lien Statute," see 26 Ga. St. B.J. 76 (1989). For article on construction law, see 42 Mercer L. Rev. 25 (1990).

For note on 1989 amendment to O.C.G.A. Art. 2, Ch. 13, T. 48, see 6 Ga. St. U.L. Rev. 319 (1989).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. Art. 2, Ch. 13, T. 48 is not violative of Ga. Const. 1976, Art. I, Sec. I, Para. IX as the same attack might lie logically against innumerable provisions of law which define the rights of litigants. *Gorrell v. Fowler*, 248 Ga. 801, 286 S.E.2d 13, appeal dismissed, 457 U.S. 1113, 102 S. Ct. 2918, 73 L. Ed. 2d 1324 (1982).

Principal purpose of O.C.G.A. Art. 2, Ch. 13, T. 48 is to require that bond be posted to ensure payment of unemployment contributions which are the responsibility of the contractor. Manifestly, the article is not designed to discriminate against nonresident contractors, but to bring nonresident contractors into a parity with resident contractors relative to compliance with an important obligation under O.C.G.A. Ch. 8, T. 34. *Gorrell v.*

Fowler, 248 Ga. 801, 286 S.E.2d 13, appeal dismissed, 457 U.S. 1113, 102 S. Ct. 2918, 73 L. Ed. 2d 1324 (1982).

O.C.G.A. Art. 2, Ch. 13, T. 48 is applicable to an action in quantum meruit. *Gorrell v. Fowler*, 248 Ga. 801, 286 S.E.2d 13, appeal dismissed, 457 U.S. 1113, 102 S. Ct. 2918, 73 L. Ed. 2d 1324 (1982).

Finding of nonresidency held correct. — When contractor stated under oath that maintenance of home, office, business records, and reporting requirements occurred in Tennessee, the trial court's factual determination as to nonresidency is correct and does not raise a jury issue. *Gorrell v. Fowler*, 248 Ga. 801, 286 S.E.2d 13, appeal dismissed, 457 U.S. 1113, 102 S. Ct. 2918, 73 L. Ed. 2d 1324 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Ga. L. 1961, p. 480, which was subsequently repealed but was succeeded by provisions in this article, are included in the annotations for this article.

Intent. — Ga. L. 1961, p. 480 is intended to provide an additional means of collecting taxes due the state and is to be in addition to existing methods. 1960-61

Op. Att'y Gen. p. 545 (decided under former Ga. L. 1961, p. 480).

Construction with other bond requirements. — Minimum requirements of the bond called for in Ga. L. 1961, p. 480 do not meet the minimum requirements of Ga. L. 1955, p. 389, and a qualifying subcontractor should, therefore, post both bonds. 1960-61 Op. Att'y Gen. p. 545 (decided under former Ga. L. 1961, p. 480).

RESEARCH REFERENCES

ALR. — Validity of privilege tax as applied to contractor performing contract

with federal government, 97 ALR 1257; 114 ALR 347.

48-13-30. "Contractor" defined.

As used in this article, the term "contractor" means any person engaged in the business of constructing, altering, repairing, dismantling, or demolishing buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, water wells, pipelines, and every other type of structure, project, development, or improvement coming within the definition of real property or personal property including, but not limited to, constructing, altering, or repairing of property to be held either for sale or rental, and all subcontractors so engaged. (Ga. L. 1961, p. 480, § 1; Code 1933, § 91A-6101, enacted by Ga. L. 1978, p. 309, § 2.)

JUDICIAL DECISIONS

When registration required. — If the corporation in question were a foreign supplier of equipment to be installed by others, the corporation would not have to register; but, if the corporation also installed the equipment in any wise, it would be liable to and subject to the non-resident contractor's provisions. *American Hosp. Supply Corp. v. Starline Mfg. Corp.*, 171 Ga. App. 790, 320 S.E.2d 857 (1984).

Construction of a telecommunications line fits within the definition of contracting activities under O.C.G.A. § 48-13-30. *Clover Cable of Ohio, Inc. v. Heywood*, 260 Ga. 341, 392 S.E.2d 855 (1990).

Subcontractor's exempt status from the sales and use tax provisions of O.C.G.A. § 48-8-63 did not confer upon the subcontractor an automatic exemption from compliance with O.C.G.A. Art. 2, Ch. 13, T. 48. *Adams v. PPT, Inc.*, 191 Ga. App. 729, 382 S.E.2d 732 (1989).

Provider of services not exempted. — In defining the term "contractor", O.C.G.A. § 48-13-30 does not exempt a provider of services. *Adams v. PPT, Inc.*, 191 Ga. App. 729, 382 S.E.2d 732 (1989).

Substantial compliance by contractor. — When a nonresident contractor did not comply with O.C.G.A. Art. 2, Ch. 13, T. 48 prior to beginning the contractor's work but, as part of the contractor's contract with Department of Transportation

(DOT), signed performance and payment bonds for 100 percent of the amount of the contract that expressly covered the payment of all state and local taxes and, prior to completion of the project, completed all steps to comply with the article, the contractor substantially complied with the article, thus, the trial court did not err in denying the DOT's motion to dismiss the contractor's action for additional compensation. *DOT v. Moseman Constr. Co.*, 260 Ga. 369, 393 S.E.2d 258 (1990).

Burden of proving defense of non-compliance. — Noncompliance with the Nonresident Contractors Act, O.C.G.A. § 48-13-30 et seq., is an affirmative defense asserted by the owner and, although it need not be pled, the owner has the burden of proving the elements of the defense the owner asserts. *Underground Festival, Inc. v. McAfee Eng'r Co.*, 214 Ga. App. 243, 447 S.E.2d 683 (1994).

Dismissal of action not required. — Failure of business to comply with Georgia Nonresident Contractors Act, O.C.G.A. § 48-13-30 et seq., did not require dismissal of action against a corporation; the fraud claims at issue arose out of a proposed merger agreement and did not depend upon a contract to perform work in Georgia or upon the recovery of payment for performance under the contract. *Infrasource, Inc. v. Hahn Yalena Corp.*, 272 Ga. App. 703, 613 S.E.2d 144 (2005).

RESEARCH REFERENCES

C.J.S. — 56 C.J.S., Mechanics' Liens, §§ 82, 87 et seq.

48-13-31. Registration of nonresident contractors; minimum contract price; reports with respect to liability; registration fees; disposition.

Each nonresident contractor desiring to engage in the business of contracting in this state shall register with the commissioner for each contract when the total contract price or compensation to be received amounts to more than \$10,000.00 and shall report to the commissioner as provided by rule with respect to the tax liability of the contractor pursuant to the business including, but not limited to, liability under Chapter 8 of Title 34. The commissioner shall charge a fee for the registration in the amount of \$10.00 for each contract. All fees received by the commissioner shall be deposited on Monday of each week with the Office of the State Treasurer. (Ga. L. 1961, p. 480, § 2; Ga. L. 1972, p. 492, § 1; Code 1933, § 91A-6102, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

Law reviews. — For article discussing legal aspects of investments and trade in

Georgia by foreign business enterprises, see 27 Mercer L. Rev. 629 (1976).

JUDICIAL DECISIONS

When registration required. — If the corporation in question were a foreign supplier of equipment to be installed by others, the corporation would not have to register; but, if the corporation also installed the equipment in any wise, the corporation would be liable to and subject to the nonresident contractor's provisions. *American Hosp. Supply Corp. v. Starline Mfg. Corp.*, 171 Ga. App. 790, 320 S.E.2d 857 (1984).

Written contract not necessary. — Failure of parties to reduce a contract to writing does not exempt a contract from the requirements of O.C.G.A. § 48-13-31. *Clover Cable of Ohio, Inc. v. Heywood*, 260 Ga. 341, 392 S.E.2d 855 (1990).

Residence not determined by domicile. — Issue of a contractor's residency was one of residence and not domicile. If the legislature wanted a contractor's domicile to determine liability under the Nonresident Contractors Act, O.C.G.A. § 48-13-30 et seq., the legislature would have used that word or defined "residence" as meaning "domicile." *ADC Constr. Co. v. Hall*, 191 Ga. App. 33, 381 S.E.2d 76, cert. denied, 191 Ga. App. 921, 381 S.E.2d 76 (1989).

Cited in *Mayor of City of Savannah v. Norman J. Bass Constr. Co.*, 264 Ga. 16, 441 S.E.2d 63 (1994).

48-13-32. Bonds; procedure; condition precedent to commencing work; amount; blanket or master bonds; amount; registration of completed contracts; fee.

(a) Before entering into the performance of any contract the total price of which or the total compensation to be received by the contractor from which amounts to more than \$10,000.00, the contractor shall execute and file with the commissioner a good and valid bond with a surety company authorized to do business in this state or with sufficient sureties to be approved by the commissioner, conditioned that all taxes which may accrue to the state and to the political subdivisions of the state on account of the execution and performance of the contract will be paid on demand, including, but not limited to, contributions due under Chapter 8 of Title 34.

(b) The execution and filing of the bond required by subsection (a) of this Code section shall be a condition precedent to commencing work on any contract in this state.

(c)(1) Every bond required by this Code section shall be in an amount equal to 10 percent of the contract price or of the compensation to be received by the contractor pursuant to the contract.

(2)(A) The commissioner may permit or require a contractor to file a blanket or master bond conditioned as provided in subsection (a) of this Code section and in a sum determined proper by the commissioner when:

(i) The contractor is engaged in a continuing service under multiple contracts or is performing services under a contract on a contingent or unit basis, and the contract price or compensation cannot be determined until after the performance of the contract; or

(ii) The commissioner finds that registration of a contract before commencement of work under the contract is impracticable for any reason.

(B) No bond pursuant to this paragraph shall be in an amount of less than \$10,000.00 with respect to all contracts to be performed during the current calendar year.

(C) On or before March 1 in each year, the contractor shall report and register all contracts of \$10,000.00 or more completed during the previous calendar year and shall pay the registration fee of \$10.00 for each contract. (Ga. L. 1961, p. 480, § 3; Code 1933, § 91A-6103, enacted by Ga. L. 1978, p. 309, § 2.)

Administrative rules and regulations. — Contractors, Official Compila-

tion of the Rules and Regulations of the State of Georgia, Department of Revenue,

Sales and Use Tax Division, Sec. 560-12-2-.26.

Foreign or non-resident contractors and subcontractors, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Sales and Use Tax Division, Sec. 560-12-2-.43.

Law reviews. — For article discussing legal aspects of investments and trade in Georgia by foreign business enterprises, see 27 Mercer L. Rev. 629 (1976).

JUDICIAL DECISIONS

Residency is a mixed question of fact and law, which is generally appropriate for the jury. *Lenox Hotel Co. v. Charter Bldrs., Inc.*, 717 F. Supp. 1558 (N.D. Ga. 1989).

Foreign corporation may be resident contractor. — Foreign corporation is not synonymous and cannot be equated with a nonresident corporation. Therefore, simply because a contractor may be considered a foreign corporation because the foreign corporation was incorporated in Texas does not preclude a finding that the foreign corporation is a resident contractor. *Lenox Hotel Co. v. Charter Bldrs., Inc.*, 717 F. Supp. 1558 (N.D. Ga. 1989).

Late registration. — Late registration and payment of all taxes and revenues due the state and the state's political subdivisions constitutes substantial com-

pliance with the requirements of the Non-resident Contractors Act, O.C.G.A. § 48-13-30 et seq., thus removing the bar to maintenance of an action on the contract. *Clover Cable of Ohio, Inc. v. Heywood*, 260 Ga. 341, 392 S.E.2d 855 (1990); *Fuller Enters. v. Hardin Constr. Group, Inc.*, 206 Ga. App. 8, 424 S.E.2d 311 (1992); *Underground Festival, Inc. v. McAfee Eng'r Co.*, 214 Ga. App. 243, 447 S.E.2d 683 (1994).

Payment of taxes without registration. — Payment of accrued state and local taxes was not "substantial compliance" with the Nonresident Contractors Act, O.C.G.A. § 48-13-30 et seq., absent registration of a construction contract with the commissioner. *Fuller Enters. v. Hardin Constr. Group, Inc.*, 206 Ga. App. 8, 424 S.E.2d 311 (1992).

RESEARCH REFERENCES

C.J.S. — 11 C.J.S., Bonds, § 7 et seq.

ALR. — Validity of statute or ordinance which requires liability or indemnity insurance or bond as condition of license for conducting business or profession, 120 ALR 950.

Building contractor's liability, upon

bond or other agreement to indemnify owner, for injury or death of third persons resulting from owner's negligence, 27 ALR3d 663.

What constitutes "public work" within statute relating to contractor's bond, 48 ALR4th 1170.

48-13-33. Injunction to prevent execution of contract pending compliance with registration and bond requirements; procedure.

Each person failing to register as required by this article or failing to execute the required bond before beginning the performance of any contract shall be denied the right to perform the contract until he complies with registration and bond requirements. The county attorney of any county in which the contract is to be performed, the Attorney General, when requested by the Commissioner of Labor, or the attorney for the commissioner, when requested by the commissioner, may proceed by injunction to prevent any activity in the performance of the

contract until the registration is made and the bond is executed and filed. A temporary injunction enjoining the execution of any such contract shall be granted without notice by any judge authorized by law to grant injunctions. (Ga. L. 1961, p. 480, § 3; Code 1933, § 91A-6104, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 708, § 18.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, “Commissioner of Labor” was substituted for “Commissioner of the Department of Labor” in the second sentence.

48-13-34. Release of bonds; completion of contract and certification from Commissioner of Labor; automatic release.

No bond required under this article shall be released until the contract for which the bond is given has been fully performed and until the commissioner obtains a written release from the Commissioner of Labor certifying that all contributions and interest due from the principal on the bond under Chapter 8 of Title 34 have been paid in full. Bonds shall be released automatically two years after written notification of the completion of the contract is received by the commissioner unless a court proceeding has been instituted against the contractor. (Ga. L. 1961, p. 480, § 7; Ga. L. 1972, p. 492, § 2; Code 1933, § 91A-6108, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 708, § 19.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, “Commissioner of Labor” was substituted for “Commissioner of the Department of Labor” in the first sentence.

RESEARCH REFERENCES

C.J.S. — 11 C.J.S., Bonds, § 55 et seq.

48-13-35. Appointment of Secretary of State by nonresident contractor as agent for service of process; time; effect on validity of process as to contractor.

At the time a contractor registers with the commissioner, the contractor shall make an appointment in writing of the Secretary of State or his successor in office to be his true and lawful agent upon whom may be served all lawful process in any action or proceeding against the nonresident contractor for state and local taxes arising out of any contract executed or being executed in this state. The appointment shall be evidence of the contractor’s agreement that any process against him which is served on the Secretary of State shall be of the same legal force and validity as if served upon him personally within the state.

(Ga. L. 1961, p. 480, § 4; Code 1933, § 91A-6105, enacted by Ga. L. 1978, p. 309, § 2.)

RESEARCH REFERENCES

C.J.S. — 72 C.J.S., Process, § 76.

48-13-36. Actions; venue; service and return of summons; procedure; record book kept by Secretary of State; contents.

An action against any contractor pursuant to this article may be brought by the attorney for the commissioner or by the Attorney General on behalf of the Department of Labor, in Fulton County or in any county in which any work under the contract is performed. The summons shall be directed to the Secretary of State and shall require the defendant to answer by a certain day, not less than 30 days nor more than 60 days from the date of the issuance of the summons. The summons shall be forwarded immediately by the clerk of the court to the Secretary of State who shall immediately forward a copy of the summons to the contractor at the address given by the contractor. After forwarding the summons, the Secretary of State shall make return of the summons to the court in which the summons was issued. The return shall show the date of receipt of the summons by the Secretary of State, the date of forwarding the copy of the summons, and the name and address of the person to whom the Secretary of State forwarded the copy of the summons. The return shall be under the hand and seal of the office of the Secretary of State and shall have the same force and effect as a due and sufficient return made by the sheriff on process directed to him. The Secretary of State shall keep a suitable record book in which he shall docket every action commenced as provided in this Code section against any contractor. The record book shall show the court in which the action is brought, the title of the case, the time when the action is commenced, and the date and manner of service. (Ga. L. 1961, p. 480, § 5; Code 1933, § 91A-6106, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 708, § 20.)

Law reviews. — For note discussing resolution of venue questions, see 9 Ga. problems with venue in Georgia, and proposing statutory revisions to improve the St. B.J. 254 (1972).

RESEARCH REFERENCES

C.J.S. — 72 C.J.S., Process, § 76. 81A
C.J.S., States, § 132.

48-13-37. Preclusion of right to bring action for payment on contract by contractor in violation of article.

No contractor who fails to register with the commissioner as required by this article or who fails to comply with any provision of this article shall be entitled to maintain an action to recover payment for performance on the contract in the courts of this state. (Ga. L. 1961, p. 480, § 6; Code 1933, § 91A-6107, enacted by Ga. L. 1978, p. 309, § 2.)

JUDICIAL DECISIONS

Compliance with O.C.G.A. Art. 2, Ch. 13, T. 48 is a condition precedent to filing suit on the contract in Georgia; however, the bar imposed by O.C.G.A. § 48-13-37 is a matter that is properly raised as a plea in abatement and not a proper subject for summary judgment. *Rehco Corp. v. California Pizza Kitchen, Inc.*, 192 Ga. App. 92, 383 S.E.2d 643 (1989).

Failure to register contract. — Payment of accrued state and local taxes was not "substantial compliance" with Nonresident Contractors Act, O.C.G.A. § 48-13-30 et seq., absent registration of construction contract with commissioner. *Fuller Enters. v. Hardin Constr. Group, Inc.*, 206 Ga. App. 8, 424 S.E.2d 311 (1992).

Defense that contractor has not complied with section need not be specially pleaded. — When contractor has not complied with the provisions of O.C.G.A. § 48-13-37, the defense of the contractor's lack of capacity to maintain the suit may be asserted at trial without being specially pled under O.C.G.A. § 9-11-9. *Gorrell v. Fowler*, 248 Ga. 801, 286 S.E.2d 13, appeal dismissed, 457 U.S. 1113, 102 S. Ct. 2918, 73 L. Ed. 2d 1324 (1982).

O.C.G.A. § 48-13-37 is a forum-closing sanction that closes the courts of Georgia to the offender until such time, if ever, when the offender can substantially comply with the provisions of O.C.G.A. Art. 2, Ch. 13, T. 48. *Adams v. PPT, Inc.*, 191 Ga. App. 729, 382 S.E.2d 732 (1989).

Dismissal, rather than summary judgment, is appropriate sanction. — Once the trial court determined that the plaintiff was required to comply with

O.C.G.A. Art. 2, Ch. 13, T. 48 and had not done so, the court lacked subject matter jurisdiction, and the appropriate action was to enter an involuntary dismissal, rather than a summary judgment. *Adams v. PPT, Inc.*, 191 Ga. App. 729, 382 S.E.2d 732 (1989).

Dismissal without prejudice not adjudication on merits. — Dismissal under O.C.G.A. § 48-13-37 is one of the few involuntary dismissals which does not act as an adjudication on the merits. *Taco Bell Corp. v. Calson Corp.*, 190 Ga. App. 481, 379 S.E.2d 6 (1989); *Clover Cable of Ohio, Inc. v. Heywood*, 260 Ga. 341, 392 S.E.2d 855 (1990); *Fuller Enters. v. Hardin Constr. Group, Inc.*, 206 Ga. App. 8, 424 S.E.2d 311 (1992).

Dismissal is for lack of subject matter jurisdiction. — Despite the involuntary nature of a dismissal based on O.C.G.A. § 48-13-37, such a dismissal is in the nature of a dismissal for lack of subject matter jurisdiction and not on the merits. *Rehco Corp. v. California Pizza Kitchen, Inc.*, 192 Ga. App. 92, 383 S.E.2d 643 (1989).

Dismissal of action not required. — Failure of business to comply with Georgia Nonresident Contractors Act, O.C.G.A. § 48-13-30 et seq., did not require dismissal of action against a corporation; the fraud claims at issue arose out of a proposed merger agreement and did not depend upon a contract to perform work in Georgia or upon the recovery of payment for performance under the contract. *Infrasource, Inc. v. Hahn Yalena Corp.*, 272 Ga. App. 703, 613 S.E.2d 144 (2005).

Recovery of payment for performance on subcontract. — By its action

against the city under former O.C.G.A. § 36-82-102, appellee sought to recover payment due it for work it had performed under its subcontract; therefore, the action sought to recover payment for performance on the contract within the meaning of O.C.G.A. § 48-13-37 and the action was therefore precluded. *Mayor of City of Sa-*

vannah v. Norman J. Bass Constr. Co., 264 Ga. 16, 441 S.E.2d 63 (1994).

Cited in *American Hosp. Supply Corp. v. Starline Mfg. Corp.*, 171 Ga. App. 790, 320 S.E.2d 857 (1984); *B.J.'s Flooring, Inc. v. T.C. Interiors, Inc.*, 204 Ga. App. 441, 419 S.E.2d 528 (1992).

48-13-38. Violations of article; penalty.

(a) It shall be unlawful for any person:

(1) Before beginning the performance of any contract, to fail to register as required by this article;

(2) Before beginning the performance of any contract, to fail to execute the bond required by this article; and

(3) To violate any other provision of this article.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1961, p. 480, § 8; Code 1933, § 91A-9929, enacted by Ga. L. 1978, p. 309, § 2.)

ARTICLE 3

EXCISE TAX ON ROOMS, LODGINGS, AND ACCOMMODATIONS

Administrative rules and regulations. — Office of Coordinated Planning, Official Compilation of the Rules and Reg-

ulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-3-3.

RESEARCH REFERENCES

ALR. — Tax on hotel-motel room occupancy, 58 ALR4th 274.

48-13-50. Purpose.

It is declared to be the purpose and intent of the General Assembly that:

(1) Each county and municipality in this state shall be authorized to levy certain excise taxes as hereinafter provided in this article; and

(2) Funds be made available for the purposes of promoting, attracting, stimulating, and developing conventions and tourism in the counties and municipalities and for the provision of other local government services. (Ga. L. 1975, p. 1002, § 1; Code 1933, § 91A-6201, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 1, § 1; Ga. L. 1990, p. 1134, § 1.)

Law reviews. — For article, “Online Travel Companies Find Issues with Hotels Extremely Taxing: Georgia’s Hotel-Motel Occupancy Excise Tax and Expedia, Inc. v. City of Columbus, T.J. Evans,” see 61 Mercer L. Rev. 1263 (2010).

JUDICIAL DECISIONS

Collection of taxes. — Although online travel companies were not operators of hotels, the companies actually collected excise taxes from hotel guests, and thus the companies were required to remit those taxes to applicable Georgia cities and counties pursuant to O.C.G.A. §§ 48-13-50 and 48-13-51. *City of Rome v. Hotels.com, LP*, No. 4:05-CV-249-HLM, 2006 U.S. Dist. LEXIS 56369 (N.D. Ga. May 8, 2006).

In a city’s action wherein the city filed a complaint seeking a declaratory judgment, injunctive relief, and other equitable remedies against an online travel company, the trial court did not err by requiring the company to collect tax payment obligations under the Enabling Statute, O.C.G.A. § 48-13-50 et seq., and a city’s ordinance via a permanent injunction. The company had contracted with the city to collect such taxes from the customers and was not an innkeeper; thus, the company was required to remit the taxes to the city. *Expedia, Inc. v. City of Columbus*, 285 Ga. 684, 681 S.E.2d 122 (2009).

Determination as to whether tax applied to online travel company had to be determined first. — Trial court erred by dismissing a city’s declaratory judgment action against several online travel companies for lack of subject matter jurisdiction, and the appellate court erred by affirming the dismissal, as the issue of whether the city’s ordinance allowing the city to collect a hotel occupancy tax from the online travel companies was a contested issue in the matter that neither lower court had determined. The legal question of whether the ordinance even applied to the online travel companies had to be determined before the city was required to submit to the administrative process set forth within the ordinance and the enabling statutes, O.C.G.A. § 48-13-50 et seq. *City of Atlanta v. Hotels.com, L.P.*, 285 Ga. 231, 674 S.E.2d 898 (2009).

Cited in *Teachers Retirement Sys. v. City of Atlanta*, 249 Ga. 196, 288 S.E.2d 200 (1982); *City of Atlanta v. Hotels.com*, 289 Ga. 323, 710 S.E.2d 766 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Imposition of tax by county and city. — “Hotel-Motel Tax” may not be imposed by both a county and a city within the boundaries of the city. 1993 Op. Att’y Gen. No. U93-12.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, *State and Local Taxation*, §§ 23, 24.
C.J.S. — 84 C.J.S., *Taxation*, § 162 et seq.

48-13-50.1. Creation of special districts.

Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. One such district shall exist within the geographical boundaries of each county, and the territory of each such district shall include all of the territory within the county except territory located within the boundaries of any municipality which

imposes an excise tax on charges to the public for rooms, lodgings, and accommodations under this article. (Code 1981, § 48-13-50.1, enacted by Ga. L. 1989, p. 1, § 1; Ga. L. 1990, p. 1134, § 1.)

Law reviews. — For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. 1983, Art. IX, Sec. II, Para. VI. *Youngblood v. State*, 259 Ga. 864, 388 S.E.2d 671 (1990).
§ 48-13-50.1 does not violate the special district provisions contained in Ga. Const.

48-13-50.2. Definitions.

As used in this article, the term:

(1) "Destination marketing organization" means a private sector nonprofit organization or other private entity which is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986 that is supported by the tax under this article, government budget allocations, private membership, or any combination thereof and the primary responsibilities of which are to encourage travelers to visit their destinations, encourage meetings and expositions in the area, and provide visitor assistance and support as needed.

(2) "Innkeeper" means any person who is subject to taxation under this article for the furnishing for value to the public any rooms, lodgings, or accommodations.

(3) "Private sector nonprofit organization" means a chamber of commerce, a convention and visitors bureau, a regional travel association, or any other private group organized for similar purposes which is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986; provided, however, that a county or municipality which has prior to April 1, 1990, contracted for a required expenditure under this Code section with a private group which is exempt from federal income tax under provisions of Section 501(c) of the Internal Revenue Code other than Section 501(c)(6) may continue to contract for required expenditures with such a private group.

(4) "Promoting tourism, conventions, and trade shows" means planning, conducting, or participating in programs of information and publicity designed to attract or advertise tourism, conventions, or trade shows.

(5) "State authority" means an authority created by state law which serves a state-wide function, including, but not limited to, the

Geo. L. Smith II Georgia World Congress Center Authority, but shall not mean an authority created for support of a local government or a local purpose or function and shall not include authorities such as area planning and development commissions and any organizational entities they may create, regional commissions and any organizational entities they may create, or local water and sewer authorities.

(6) "Tourism product development" means the expenditure of funds for the creation or expansion of physical attractions which are available and open to the public and which improve destination appeal to visitors, support visitors' experience, and are used by visitors. Such expenditures may include capital costs and operating expenses. Tourism product development may include:

(A) Lodging for the public for no longer than 30 consecutive days to the same customer;

(B) Overnight or short-term sites for recreational vehicles, trailers, campers, or tents;

(C) Meeting, convention, exhibit, and public assembly facilities;

(D) Sports stadiums, arenas, and complexes;

(E) Golf courses associated with a resort development that are open to the general public on a contract or fee basis;

(F) Racing facilities, including dragstrips, motorcycle race-tracks, and auto or stock car racetracks or speedways;

(G) Amusement centers, amusement parks, theme parks, or amusement piers;

(H) Hunting preserves, trapping preserves, or fishing preserves or lakes;

(I) Visitor information and welcome centers;

(J) Wayfinding signage;

(K) Permanent, nonmigrating carnivals or fairs;

(L) Airplanes, helicopters, buses, vans, or boats for excursions or sightseeing;

(M) Boat rentals, boat party fishing services, rowboat or canoe rentals, horse shows, natural wonder attractions, picnic grounds, river-rafting services, scenic railroads for amusement, aerial tramways, rodeos, water slides, or wave pools;

(N) Museums, planetariums, art galleries, botanical gardens, aquariums, or zoological gardens;

(O) Parks, trails, and other recreational facilities; or

(P) Performing arts facilities. (Code 1981, § 48-13-50.2, enacted by Ga. L. 2000, p. 1325, § 1; Ga. L. 2008, p. 1032, § 1/HB 1168; Ga. L. 2009, p. 8, § 48/SB 46.)

JUDICIAL DECISIONS

Cited in *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

48-13-51. County and municipal levies on public accommodations charges for promotion of tourism, conventions, and trade shows.

(a)(1)(A) The governing authority of each municipality in this state may levy and collect an excise tax upon the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value. Within the territorial limits of the special district located within the county, each county in this state may levy and collect an excise tax upon the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the county for operating within the special district a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value. The provisions of this Code section shall control over the provisions of any local ordinance or resolution to the contrary enacted pursuant to Code Section 48-13-53 and in effect prior to July 1, 1998. Any such ordinance shall not be deemed repealed by this Code section but shall be administered in conformity with this Code section.

(B)(i) The excise tax shall be imposed on any person or legal entity licensed by or required to pay a business or occupation tax to the governing authority imposing the tax for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value and shall apply to the furnishing for value of any room, lodging, or accommodation. Every person or entity subject to a tax levied as provided in this Code section shall, except as provided in this Code section, be liable for the tax at the applicable rate on the lodging charges actually collected or, if the amount of taxes collected from the hotel or motel guest is

in excess of the total amount that should have been collected, the total amount actually collected must be remitted.

(ii) Any tax levied as provided in this Code section is also imposed upon every person or entity who is a hotel or motel guest and who receives a room, lodging, or accommodation that is subject to the tax levied under this Code section. Every such guest subject to the tax levied under this Code section shall pay the tax to the person or entity providing the room, lodging, or accommodation. The tax shall be a debt of the person obtaining the room, lodging, or accommodation to the person or entity providing such room, lodging, or accommodation until it is paid and shall be recoverable at law by the person or entity providing such room, lodging, or accommodation in the same manner as authorized for the recovery of other debts. The person or entity collecting the tax from the hotel or motel guest shall remit the tax to the governing authority imposing the tax, and the tax remitted shall be a credit against the tax imposed by division (i) of this subparagraph on the person or entity providing the room, lodging, or accommodation.

(C) Reserved.

(D) Except as provided in paragraphs (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), and (5.3) of this subsection, no tax levied pursuant to this Code section shall be levied or collected at a rate exceeding 3 percent of the charge to the public for the furnishings.

(2) A county or municipality levying a tax as provided in paragraph (1) of this subsection shall in each fiscal year beginning on or after July 1, 1987, expend for the purpose of promoting tourism, conventions, and trade shows a percentage of the total taxes collected under this Code section which is not less than the percentage of such tax collections expended for such purposes during the immediately preceding fiscal year. In addition, if during such immediately preceding fiscal year any portion of such tax receipts was expended for such purposes through a grant to or a contract or contracts with the state, a department of state government, a state authority, or a private sector nonprofit organization, then in each fiscal year beginning on or after July 1, 1987, at least the same percentage shall be expended through a contract or contracts with one or more such entities for the purpose of promoting tourism, conventions, and trade shows. The expenditure requirements of this paragraph shall cease to apply to a county or municipality which levies a tax at a rate in excess of 3 percent, as authorized under paragraphs (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), and (5.3) of this subsection; and in such case the

expenditure requirements of such paragraph of this subsection pursuant to which such tax is levied shall apply instead.

(2.1)(A) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and municipalities within such a county in which county or municipality community auditorium or theater facilities owned and operated by a municipality have been renovated which renovations are completed substantially on or before July 1, 1995, and which county and municipalities have not previously levied a 6 percent tax under paragraph (4) of this subsection may levy a tax under this Code section at a rate of 5 percent.

(B) A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of general recreation. Amounts so expended shall be expended only through a contract or contracts with a recreation authority created by local Act of the General Assembly.

(2.2)(A) Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph, the term:

(i) "Charitable trust" shall have the meaning given such term in subsection (d) of Code Section 48-13-55.

(ii) "Development authority" shall mean a development authority created pursuant to Chapter 62 of Title 36, the "Development Authorities Law."

(iii) "Facility" or "facilities" shall mean any of the buildings, structures, and facilities described in division (ii) of subparagraph (D) of this paragraph.

(iv) "Functionally related business" shall have the meaning given such term in subsection (d) of Code Section 48-13-55.

(v) "Fund" or "funding" shall include the cost and expense of all things necessary for the construction and operation of a facility or facilities, including, but not limited to, the study, operation, marketing, acquisition, construction, financing (including the payment of principal of and interest on any obligation of a development authority to finance such facility or facilities or refund any obligation of a development authority previously issued to finance such facility or facilities), development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or

facilities and the repayment of any obligation incurred in connection therewith.

(vi) "Obligation" shall mean bonds, notes, or any instrument creating an obligation to pay or reserve moneys, having an initial term of not more than 35 years.

(vii) "Related entity" shall mean, with respect to a charitable trust, a functionally related business of such charitable trust, or any for profit or not for profit entity owned by or under common ownership with such charitable trust or owned by or under common ownership with a functionally related business of such charitable trust or otherwise affiliated with such charitable trust in a manner approved by the development authority.

(B) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or any municipality within such county in which is located, in either case, a convention and conference center which is at least 50,000 square feet in size and is owned in fee simple by a development authority and leased by such development authority to a charitable trust or a related entity thereof, and in which county or municipality there exists a private sector nonprofit organization which, on or before December 31, 2005, entered into a contract or a memorandum of understanding with the county or municipality and the aforementioned charitable trust pursuant to Code Section 48-13-55 relating to the expenditure of the proceeds of the tax collected under this Code section, may levy a tax under this Code section at a rate of 5 percent.

(C) The proceeds of the taxes collected under this paragraph shall be expended pursuant to a contract or a memorandum of understanding between the county or municipality, the private sector nonprofit organization, and the charitable trust, and such proceeds may be expended by or for the benefit of the county or municipality, the private sector nonprofit organization, or the charitable trust and related entities thereof for the purposes described in subparagraph (D) of this paragraph, provided that the expenditure of the proceeds of the tax levied on a charitable trust or a functionally related business thereof shall meet the requirements of Code Section 48-13-55.

(D) The proceeds of the taxes collected under this paragraph may be expended for any or all of the following purposes:

- (i) Promoting tourism, conventions, and trade shows;
- (ii) Promoting, attracting, stimulating, and developing conventions and tourism pursuant to Code Section 48-13-55; or

(iii) Funding, supporting, acquiring, constructing, renovating, improving, and equipping buildings, structures, infrastructure, and facilities which have the effect of promoting, attracting, stimulating, and developing conventions and tourism, including, but not limited to, a hotel facility and infrastructure and utility projects, provided that during any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this paragraph, secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the county or municipality to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interest and rights of the holder of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a development authority, shall constitute a contract with the holder of such obligation.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 5 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (C) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987; (D) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded prior to July 1, 1990, in whole or in part by a grant of state funds or is funded on or after July 1, 1990, in whole or substantially by an appropriation of state funds; (E) supporting a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by

Article 3 of Chapter 8 of this title, as amended and if such facility was substantially completed and in operation prior to December 31, 1993; or (F) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for purposes (C) and (D) may be so expended in any otherwise lawful manner.

(3.1) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a county in which a trade and convention center authority has been created by intergovernmental contract between a county and one or more municipalities located therein, and which trade and convention center authority is in existence on or before March 21, 1988, and which trade and convention center authority has not constructed or operated any facility before March 21, 1988, may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to at least 62 1/2 percent of the total taxes collected at the rate of 6 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) funding, supporting, acquiring, constructing, renovating, improving, and equipping buildings, structures, and facilities, including, but not limited to, a trade and convention center, exhibit hall, conference center, performing arts center, accommodations facilities including food service, or any combination thereof, for convention, trade show, athletic, musical, theatrical, cultural, civic, and performing arts purposes and other events and activities for similar and related purposes, acquiring the necessary property therefor, both real and personal, and funding all expenses incident thereto, and supporting, maintaining, and promoting such facilities owned, operated, or leased by or to the local trade and convention center authority; or (C) for some combination of such purposes; provided, however, that at least 50 percent of the total taxes collected at the rate of 6 percent shall be expended for the purposes specified in subparagraph (B) of this paragraph. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, a local building authority created by local constitutional amendment, and a trade and convention center authority created by intergovernmental contract between a county and one or more municipalities

located therein, or a private sector nonprofit organization or through a contract or contracts with some combination of such entities. The aggregate amount of all excise taxes imposed under this paragraph and all sales and use taxes, and other taxes imposed by a county or municipality, or both, shall not exceed 13 percent. Any tax levied pursuant to this paragraph shall terminate not later than December 31, 2029, provided that during any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this paragraph, secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interests and rights of the holder of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a building authority created by local constitutional amendment, shall constitute a contract with the holder of such obligation. Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph, the term: "fund" or "funding" shall include the cost and expense of all things deemed necessary by a building authority created by local constitutional amendment for the construction and operation of a facility or facilities including but not limited to the study, operation, marketing, acquisition, construction, financing, including the payment of principal and interest on any obligation of the building authority created by local constitutional amendment and any obligation of the building authority created by local constitutional amendment to refund any prior obligation of the building authority created by local constitutional amendment, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities and the repayment of any obligation incurred by an authority in connection therewith; "obligation" shall include bonds, notes, or any instrument creating an obligation to pay or reserve moneys and having an initial term of not more than 37 years; and "facility" or "facilities" shall mean any of the buildings, structures, and facilities described in subparagraph (B) of this paragraph and any associated parking areas or improvements originally owned or operated incident to the ownership or operation of such facility used for any purpose or purposes specified in subparagraph (B) of this paragraph by a building authority created by local constitutional amendment.

(3.2) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a

county in which a trade and convention center facility is substantially funded by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, which tax was levied prior to January 1, 1994, and is substantially funded by a state grant or grants authorized on or before January 1, 1996, may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to $33\frac{1}{3}$ percent of the total taxes collected at the rate of 6 percent for the purpose of promoting tourism, conventions, and trade shows under a contract with a private sector nonprofit organization as defined in subparagraph (A) of paragraph (8) of this subsection. In addition to the amounts required to be expended above, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to $16\frac{2}{3}$ percent of the total taxes collected at the rate of 6 percent for the purpose of either marketing or operating trade and convention facilities. Marketing and operating expenditures may include a preopening marketing program for such a facility and an escrow account accrued prior to opening such facility to cover operating expenses to be incurred after the opening of such a facility. In the event such facility is not constructed, collected funds may be used for any lawful purpose relating to tourism by the county or municipality levying a tax pursuant to this paragraph.

(3.3) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a county in which a trade and convention center facility is substantially funded by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, which tax was levied prior to January 1, 1994, and which facility was completed and in operation prior to December 31, 1994, and which county and municipalities have not previously levied a 6 percent tax under paragraph (4) of this subsection, may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend for the purpose of promoting tourism, conventions, and trade shows in each fiscal year during which the tax is collected under this paragraph an amount which is equal to (A) an amount which is not less than the amount which would have been spent if the tax rate had not been increased to 6 percent and if the same percentage of tax collections expended for such purposes during the immediately preceding fiscal year were expended for such purposes during the current fiscal year plus (B) an amount equal to $16\frac{2}{3}$ percent of the total taxes collected at the rate of 6 percent.

(3.4) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (C) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987; (D) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded prior to July 1, 1990, in whole or in part by a grant of state funds or is funded on or after July 1, 1990, in whole or substantially by an appropriation of state funds; (E) supporting a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, and if such facility was substantially completed and in operation prior to December 31, 1993; or (F) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for the purposes specified in subparagraphs (C) and (D) of this paragraph may be so expended in any otherwise lawful manner. In addition to the amounts otherwise required to be expended under this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to $16 \frac{2}{3}$ percent of the total taxes collected at the rate of 6 percent for promoting tourism, conventions, and trade shows. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau

authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities.

(3.5) Notwithstanding the provisions of paragraph (1) of this subsection, a local consolidated government (within the territorial limits of the special district located within the county the boundary of which is conterminous with that of such local consolidated government) may levy a tax under this Code section at a rate of 6 percent. A local consolidated government levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of promoting tourism, conventions, and trade shows through a contract with a private sector nonprofit organization. In addition to the amounts thus required to be expended, a local consolidated government levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to $16 \frac{2}{3}$ percent of the total taxes collected at the rate of 6 percent for the purpose of supporting a civic center owned and operated by the local consolidated government.

(3.6) Reserved.

(3.7)(A) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of:

- (i) Promoting tourism, conventions, and trade shows;
- (ii) Supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes;
- (iii) Supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987;
- (iv) Supporting a facility owned or operated by a local government or local authority for convention and trade show purposes

or any other similar or related purposes if construction of such facility is funded or was funded prior to July 1, 1990, in whole or in part by a grant of state funds or is funded on or after July 1, 1990, in whole or substantially by an appropriation of state funds;

(v) Supporting a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended and if such facility was substantially completed and in operation prior to December 31, 1993; or

(vi) For some combination of such purposes.

(B) Amounts expended pursuant to subparagraph (A) of this paragraph shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended pursuant to division (iii) or (iv) of subparagraph (A) of this paragraph may be so expended in any otherwise lawful manner.

(3.8)(A) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 8 percent if there is located in such county or municipality an international horse park which was used in Olympic Games competition and which was in operation prior to January 1, 1999. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 4 percent for the purpose of:

(i) Promoting tourism, conventions, and trade shows; or

(ii) Supporting a publicly owned facility operated for convention and trade show purposes or any other similar or related purposes.

(B) Amounts expended pursuant to subparagraph (A) of this paragraph shall be expended only through a contract or contracts with the state, a department of state government, a state authority,

a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization or through a contract or contracts with some combination of such entities.

(C) In addition to the other amounts required to be expended under this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to $16 \frac{2}{3}$ percent of the total taxes collected at the rate of 8 percent for the purpose of constructing, developing, supporting, and operating a nature center, nature park, wetlands education center, or nature museum for educational and recreational purposes or any other similar purposes. Amounts which are expended to meet the $16 \frac{2}{3}$ percent expenditure requirement of this subparagraph shall not be subject to the provisions of subparagraph (B) of this paragraph requiring expenditure through a contract or contracts with certain entities.

(4) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to at least $43 \frac{1}{3}$ percent of the total taxes collected at the rate of 6 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (C) supporting a facility owned or operated by a local authority or local government for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987; (D) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded prior to July 1, 1990, in whole or in part by a grant of state funds or is funded on or after July 1, 1990, in whole or substantially by an appropriation of state funds; (E) supporting a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, and such facility was substantially completed and in operation prior to December 31, 1993;

or (F) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for purposes (C) and (D) may be so expended in any otherwise lawful manner. In addition to the amounts required to be expended above, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to at least 1 percent of the total taxes collected at the rate of 6 percent for the purpose of supporting a museum of aviation and aviation hall of fame or an amount equal to at least 16 2/3 percent of the total taxes collected at the rate of 6 percent for the purpose of: (A) construction or expansion of either: (i) a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (ii) a facility owned or operated by a local authority or local government for convention and trade show purposes or any other similar or related purposes, if such support is provided to a governmental entity with which the county or municipality levying the tax had in effect on January 1, 1987, a contractual agreement concerning governmental support of a convention and trade show facility; (iii) a facility owned or operated for convention and trade show purposes, visitor welcome center purposes, or any other similar or related purposes by a convention and visitors bureau authority created by local Act of the General Assembly for a municipality; (iv) a facility owned or operated for convention and trade show purposes or any other similar or related purposes by a coliseum and exhibit hall authority created by local Act of the General Assembly for a county and one or more municipalities therein; (v) a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, and such facility was substantially completed and in operation prior to December 31, 1993; (vi) a system of bicycle or pedestrian trails or walkways or both connecting a historic district within the levying county or municipality and surrounding areas (and with respect to this purpose (vi) construction and expansion shall include acquisition and development), if not later than December 1, 1993, the county or municipality has adopted ordinances, resolutions, or contracts which: (I) designate such historic district; (II) obligate the county or municipality to provide funds to promote tourism to a historic district owners and

business association which qualifies as a private sector nonprofit organization under subparagraph (a)(8)(A) of this Code section and Section 501(c)(6) of the Internal Revenue Code; (III) provide a “comprehensive plan” as provided for in Chapters 70 and 71 of Title 36; (IV) provide a transportation plan as a component of such comprehensive plan; and (V) provide a recreation plan which is designed to identify recreation needs through the year 2000 and which includes provisions for such system of trails or walkways or both; provided that the authority to expend funds for such system of trails or walkways or both shall expire when all capital costs of the initial acquisition, construction, and development of such system as identified in the relevant plan have been paid and in no event later than July 1, 2002. Amounts so expended to meet such 16 2/3 percent expenditure requirement shall not be subject to the foregoing provisions of this paragraph requiring expenditure through a contract or contracts with certain entities; or (vii) a system of bicycle or pedestrian greenways, trails, walkways, or any combination thereof connecting a downtown historic or business district within the levying county or municipality and surrounding areas (and with respect to this purpose (vii) construction and expansion shall include acquisition and development), if not later than December 1, 2000, the county or municipality has adopted ordinances, resolutions, or contracts which: (I) designate such historic or downtown business district; (II) obligate the county or municipality to provide funds to promote tourism to a downtown business district owners and business association or chamber of commerce which qualifies as a private sector nonprofit organization under subparagraph (a)(8)(A) of this Code section and Section 501(c)(6) of the Internal Revenue Code; (III) provide a “comprehensive plan” as provided for in Chapters 70 and 71 of Title 36; (IV) provide a transportation plan as a component of such comprehensive plan; and (V) provide a recreation plan as a component of such comprehensive plan which includes provisions for such system of trails or walkways or both; provided that the authority to expend funds for such system of trails or walkways or both shall expire when all capital costs of the initial acquisition, construction, and development of such system as identified in the relevant plan have been paid and in no event later than July 1, 2025; or (B) promoting tourism, conventions, and trade shows. Amounts so expended to meet such 16 2/3 percent expenditure requirement shall not be subject to the foregoing provisions of this paragraph requiring expenditure through a contract or contracts with certain entities.

(4.1) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality within a county in which a coliseum authority has been created by local Act of the General

Assembly and which authority is in existence on or before July 1, 1963, for the purpose of owning or operating a facility, may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to at least 62 1/2 percent of the total taxes collected at the rate of 7 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) funding and supporting a facility owned or operated by such coliseum authority; or (C) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, a local coliseum authority, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for purpose (B) may be so expended in any otherwise lawful manner without the necessity of a contract. The aggregate amount of all excise taxes imposed under this paragraph and all sales and use taxes, and other taxes imposed by a county or municipality, or both, shall not exceed 12 percent. Any tax levied pursuant to this paragraph shall terminate not later than December 31, 2028, provided that during any period during which there remains outstanding any obligation which is incurred prior to January 1, 1995, issued to fund a facility as contemplated by this paragraph, and secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interest and rights of the holders of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a coliseum and exhibit hall authority, shall constitute a contract with the holder of such obligations. Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph, the term: "fund" and "funding" shall include the cost and expense of all things deemed necessary by a local coliseum authority for the construction, renovation, and operation of a facility including but not limited to the study, operation, marketing, acquisition, construction, finance, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities, and the repayment of any obligation incurred by a local coliseum authority in connection therewith; "obligation" shall include bonds, notes, or any instrument creating an obligation to pay or reserve moneys incurred prior to January 1, 1995, and

having an initial term of not more than 30 years; and “facility” shall mean a coliseum or other facility and any associated parking areas or improvements originally owned or operated incident to the ownership or operation of a facility used for convention and trade show purposes or amusement purposes, educational purposes, or a combination thereof and for fairs, expositions, or exhibitions in connection therewith by a local coliseum authority.

(4.2) Notwithstanding the provisions of paragraph (1) of this subsection, a local consolidated government (within the territorial limits of the special district located within the county the boundary of which is conterminous with that of such local consolidated government) may levy a tax under this Code section at a rate of 7 percent. A local consolidated government levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent as follows: an amount equal to 28.58 of the total taxes collected at the rate of 7 percent for the purpose of promoting tourism, conventions, and trade shows through a contract with a private sector nonprofit organization, an authority created by local Act of the General Assembly, or through a contract or contracts with any combination of such entities; an amount equal to 14.29 percent of the total taxes collected at the rate of 7 percent for the purpose of supporting a civic center owned or operated, or both, by the local consolidated government; and an amount equal to 14.29 percent of the total taxes collected at the rate of 7 percent for the purpose of maintaining and operating a performing arts facility.

(4.3) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) amounts as follows: an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of promoting tourism, conventions, and trade shows which amount shall be expended only through a contract or contracts with the state, a department of state government, a state authority, an authority created by local Act of the General Assembly, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities; and an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of supporting a conference and convention center facility or similar facility owned or operated by an authority created by local Act of the

General Assembly for convention and conference center purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on or prior to July 1, 1997, and if such conference and convention center facility or similar facility is substantially completed and in operation prior to December 31, 2001, which amounts shall be expended only through a contract or contracts with the state or an authority created by local Act of the General Assembly.

(4.4) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and municipalities within a county in which community auditorium or theater facilities owned and operated by the municipality or by a local authority created by local Act of the General Assembly for such purpose have been renovated which renovations are completed substantially on or before January 1, 2000, may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of promoting tourism, conventions, and trade shows under a contract with a private sector nonprofit organization defined in subparagraph (A) of paragraph (8) of this subsection; and an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of either marketing or operating community auditorium or theater facilities or a community convention or trade center of which the theater or auditorium is a part. Marketing and operating expenditures may include a preopening marketing program for such facilities and an escrow account accrued prior to opening such facilities to cover operating expenses to be incurred after the opening of such facilities.

(4.5) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) amounts as follows: (A) an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of (i) promoting tourism, conventions, and trade shows; (ii) supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (iii) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes; or (iv) for some combination of such purposes. Amounts so

expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for purpose (iii) may be so expended in any otherwise lawful manner; and (B) an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of operating, maintaining, and marketing of a conference center facility.

(4.6)(A) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality within a county in which a convention center authority has been created by local Act of the General Assembly and which authority is in existence on or before July 1, 2001, for the purpose of owning or operating a facility may levy a tax under this Code section at a rate of 5 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to at least 40 percent of the total taxes collected at the rate of 5 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) funding and supporting a facility owned or operated by such convention and visitors authority; or (C) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention center authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for purpose (B) may be so expended in any otherwise lawful manner without the necessity of a contract. Any tax levied pursuant to this paragraph shall terminate not later than December 31, 2037, provided that during any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this paragraph, and secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state, and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interest and rights of the holders of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a convention center authority, shall constitute a contract with the

holder of such obligations. Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph, the terms "fund" and "funding" shall include the cost and expense of all things deemed necessary by a local convention center authority for the construction, renovation, and operation of a facility including, but not limited to, the study, operation, marketing, acquisition, construction, finance, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities, and the repayment of any obligation incurred by a local convention center authority in connection therewith; "obligation" shall include bonds, notes, or any instrument creating an obligation to pay or reserve moneys and having an initial term of not more than 37 years; and "facility" shall mean a convention center or other facility and any associated parking areas or improvements originally owned or operated incident to the ownership or operation of a facility used for convention and trade show purposes or amusement purposes, educational purposes, or a combination thereof and for fairs, expositions, or exhibitions in connection therewith by a local convention center authority.

(B) Notwithstanding any other provision of this subparagraph, a municipality located within a standard metropolitan statistical area recognized by the United States Department of Commerce, Bureau of the Census, which is levying a tax at a rate of 5 percent pursuant to paragraph (3) of this subsection on or before January 1, 1999, and in which an interstate highway is located, shall, on and after April 28, 1999, be authorized to levy and collect a tax under this Code section at a rate of 6 percent. A municipality levying a tax pursuant to this subparagraph shall expend, in each fiscal year during which the tax is collected under this subparagraph, an amount equal to the amount by which the total taxes collected under this subparagraph exceed the taxes which would have been collected at the rate of 5 percent for the purpose of dispensing information about the qualities of such municipality and promoting business in the municipality and to acquire for such use a building located in an area of high density retail businesses within the limits of such municipality. During any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this subparagraph, and secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and municipalities to impose and distribute the tax imposed by this subparagraph shall not be diminished or impaired by the state, and no county or municipality levying the tax imposed by this subparagraph shall cease to levy the tax in any manner that will impair the interest and rights of

the holders of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a convention center authority, shall constitute a contract with the holder of such obligations.

(4.7) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a county in which a trade and convention center facility is substantially funded by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, which tax was levied prior to January 1, 1994, and is substantially funded by a state grant or grants authorized on or before January 1, 1996, may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 28.6 percent of the total taxes collected at the rate of 7 percent for the purpose of promoting tourism, conventions, and trade shows under a contract with a private sector nonprofit organization as defined in subparagraph (A) of paragraph (8) of this subsection. In addition to the other amounts required to be expended under this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 14.3 percent of the total taxes collected at the rate of 7 percent for the purpose of either marketing or operating trade and convention facilities which are managed or operated by the Georgia International and Maritime Trade Center Authority. Marketing and operating expenditures may include a preopening marketing program for such a facility and an escrow account accrued prior to opening such facility to cover operating expenses to be incurred after the opening of such a facility. In the event such facility is not constructed, such 14.3 percent may be used for any lawful purpose relating to tourism by the county or municipality levying a tax pursuant to this paragraph. In addition to the amounts required to be expended under this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 14.3 percent of the total taxes collected at the rate of 7 percent for the purpose of planning, constructing, marketing, or operating an attraction honoring the inventor of the cotton gin. Marketing and operating expenditures may include a preopening marketing program for such facility and an escrow account accrued prior to opening such facility to cover operating expenses to be incurred after the opening of such facility. In the event such facility is not constructed, such 14.3 percent may be used for any lawful purpose relating to tourism by the county or municipality levying a tax pursuant to this paragraph.

(5)(A)(i) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality is authorized to levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend an amount equal to at least 51.4 percent of the total taxes collected prior to July 1, 1990, at the rate of 7 percent and an amount equal to at least 32.14 percent of the total taxes collected on or after July 1, 1990, at the rate of 7 percent for the purpose of: (I) promoting tourism, conventions, and trade shows; (II) supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (III) supporting a facility owned or operated by a local authority or local government for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987; (IV) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded in whole or in part by a grant of state funds; or (V) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, or a private sector nonprofit organization or through a contract or contracts with some combination of such entities, except that amounts expended for those purposes specified in subdivisions (III) and (IV) of this division may be so expended in any otherwise lawful manner.

(ii) In addition to the amounts required to be expended under division (i) of this subparagraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 14.3 percent of the total taxes collected prior to July 1, 1990, at the rate of 7 percent and an amount equal to 39.3 percent of the total taxes collected on or after July 1, 1990, at the rate of 7 percent toward funding a multipurpose domed stadium facility. Amounts so expended shall be expended only through a contract originally with the state, a department or agency of the state, or a state authority or through a contract or contracts with some combination of the above. Any tax levied pursuant to this paragraph shall terminate not later than December 31, 2020, unless extended as provided in subparagraph (B) of this paragraph, provided that during any period

during which there remains outstanding any obligation which is incurred prior to January 1, 1991, issued to fund a multipurpose domed stadium as contemplated by this paragraph, and secured in whole or in part by a pledge of a tax authorized under this Code section, or any such obligation which is incurred to refund such an obligation incurred before January 1, 1991, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interest and rights of the holders of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by an authority of the state, shall constitute a contract with the holder of such obligations.

(B) Notwithstanding the termination date stated in division (ii) of subparagraph (A) of this paragraph, notwithstanding paragraph (6) of this subsection, and notwithstanding subsection (b) of this Code section, a tax levied under this paragraph may be extended by resolution of the levying county or municipality and continue to be collected through December 31, 2050, if a state authority certifies: (i) that the same portion of the proceeds will be used to fund a successor facility to the multipurpose domed facility as is currently required to fund the multipurpose domed facility under division (ii) of subparagraph (A) of this paragraph; (ii) that such successor facility will be located on property owned by the state authority; and (iii) that the state authority has entered into a contract with a national football league team for use of the successor facility by the national football league team through the end of the new extended period of the tax collection. During the extended period of collection provided for in this subparagraph, the county or municipality levying the tax shall continue to comply with the expenditure requirements of division (i) of subparagraph (A) of this paragraph. During the extended period of collection, the county or municipality shall further expend (in each fiscal year during which the tax is collected during the extended period of collection) an amount equal to 39.3 percent of the total taxes collected at the rate of 7 percent toward funding the successor facility certified by the state authority. Amounts so expended shall be expended only through a contract with the certifying state authority. Any tax levied pursuant to this paragraph shall terminate not later than December 31, 2050, provided that during any period during which there remains outstanding any obligation which is incurred to fund the successor facility certified by the state authority, and secured in whole or in part by a pledge of a tax authorized under this Code section, or any

such obligation which is incurred to refund such an obligation, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interest and rights of the holders of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by an authority of the state, shall constitute a contract with the holder of such obligations.

(5.1) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a county in which a coliseum and exhibit hall authority has been created by local Act of the General Assembly for a county and one or more municipalities therein, and which local coliseum and exhibit hall authority is in existence on or before January 1, 1991, and which local coliseum and exhibit hall authority has not constructed or operated any facility before January 1, 1991, may levy a tax under this Code section at a rate of 8 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to at least 62 1/2 percent of the total taxes collected at the rate of 8 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) funding, supporting, acquiring, constructing, renovating, improving, and equipping buildings, structures, and facilities, including, but not limited to, a coliseum, exhibit hall, conference center, performing arts center, or any combination thereof, for convention, trade show, athletic, musical, theatrical, cultural, civic, and performing arts purposes and other events and activities for similar and related purposes, acquiring the necessary property therefor, both real and personal, and funding all expenses incident thereto, and supporting, maintaining, and promoting such facilities owned, operated, or leased by or to the local coliseum and exhibit hall authority or a downtown development authority; or (C) for some combination of such purposes; provided, however, that at least 50 percent of the total taxes collected at the rate of 8 percent shall be expended for the purposes specified in subparagraph (B) of this paragraph. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, a local coliseum and exhibit hall authority, a downtown development authority, or a private sector nonprofit organization or through a contract or contracts with some combination of such entities, notwithstanding any provision of paragraph (8) of this

subsection to the contrary. The aggregate amount of all excise taxes imposed under this paragraph and all sales and use taxes, and other taxes imposed by a county or municipality, or both, shall not exceed 13 percent; provided, however, that any sales tax for educational purposes which is imposed pursuant to Article VIII, Section VI, Paragraph IV of the Constitution shall not be included in calculating such limitation. Any tax levied pursuant to this paragraph shall terminate not later than December 31, 2028, provided that during any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this paragraph, secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interests and rights of the holder of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a local coliseum and exhibit hall authority or a downtown development authority, shall constitute a contract with the holder of such obligation. Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph, the term: “fund” or “funding” shall include the cost and expense of all things deemed necessary by a local coliseum and exhibit hall authority or a downtown development authority for the construction and operation of a facility or facilities including but not limited to the study, operation, marketing, acquisition, construction, financing, including the payment of principal and interest on any obligation of the local coliseum and exhibit hall authority or the downtown development authority and any obligation of the local coliseum and exhibit hall authority or the downtown development authority to refund any prior obligation of the local coliseum and exhibit hall authority or the downtown development authority, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities and the repayment of any obligation incurred by an authority in connection therewith; “obligation” shall include bonds, notes, or any instrument creating an obligation to pay or reserve moneys and having an initial term of not more than 37 years; “facility” or “facilities” shall mean any of the buildings, structures, and facilities described in subparagraph (B) of this paragraph and any associated parking areas or improvements originally owned or operated incident to the ownership or operation of such facility used for any purpose or purposes specified in subparagraph (B) of this paragraph by a local coliseum and exhibit hall authority or a downtown development authority; and “downtown development authority” shall mean a downtown development author-

ity created by local Act of the General Assembly for a municipality pursuant to a local constitutional amendment.

(5.2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and municipalities within a county in which community auditorium or theater facilities owned and operated by the municipality have been renovated which renovations are completed substantially on or before July 1, 1995, and which county and municipalities have not previously levied a 6 percent tax under paragraph (4) of this subsection may levy a tax under this Code section at a rate of 8 percent.

(B) A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to $33 \frac{1}{3}$ percent of the total taxes collected at the rate of 8 percent under this subparagraph for the purpose of promoting tourism, conventions, and trade shows under a contract with a private sector nonprofit organization defined in subparagraph (A) of paragraph (8) of this subsection.

(C) In addition to the amounts required to be expended pursuant to subparagraph (B) of this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to $16 \frac{2}{3}$ percent of the total taxes collected at the rate of 8 percent for the purpose of either marketing or operating community auditorium or theater facilities or community convention or trade center of which the theater or auditorium is a part. Marketing and operating expenditures may include a preopening marketing program for such facilities and an escrow account accrued prior to opening such facilities to cover operating expenses to be incurred after the opening of such facilities.

(D) In addition to the amounts required to be expended pursuant to subparagraphs (B) and (C) of this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to $33 \frac{1}{3}$ percent of the total taxes collected at the rate of 8 percent for general recreation purposes. Amounts so expended shall be expended only through a contract or contracts with a recreation authority created by local Act of the General Assembly.

(5.3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and municipalities within such a

county in which a convention and visitor's bureau authority has been created by local Act of the General Assembly which was in existence on July 1, 2005, and which authority is established specifically by such local Act as a permissible, but not exclusive, entity for the transfer of hotel and motel tax funds by the taxing entities of the county for which such authority was created may levy a tax under this Code section at a rate of 5 percent.

(B) The provisions of paragraph (2) of this subsection relating to expenditures shall apply to this paragraph; provided, however, that a county or municipality levying a tax pursuant to this paragraph shall be authorized, but not required, to expend funds through a convention and visitor's bureau authority created by local Act of the General Assembly.

(6) Following the termination of a tax under paragraph (2.1), (2.2), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection, any county or municipality which has levied a tax pursuant to paragraph (2.1), (2.2), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall levy any future taxes under this Code section in a manner authorized by subsection (b) of this Code section.

(7) As used in this subsection, the term:

(A) "Fund" and "funding" mean the cost and expense of all things deemed necessary by a state authority for the construction and operation of a multipurpose domed stadium and a successor facility to such multipurpose domed stadium including but not limited to the study, operation, marketing, acquisition, construction, finance, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities, and the repayment of any obligation incurred by an authority in connection therewith.

(B) "Obligation" means bonds, notes, or any instrument creating an obligation to pay or reserve moneys, and having an initial term of not more than 30 years.

(C) "Multipurpose domed stadium facility" means a multipurpose domed stadium facility and any associated parking areas or improvements originally owned or operated incident to the ownership or operation of a facility used for convention and trade show purposes by the state, a department or agency of the state, a state authority, or a combination thereof.

(8) Reserved.

(9)(A) A county or municipality imposing a tax under paragraph (1), (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1),

(4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall prior to the imposition of the tax (if the tax is imposed on or after July 1, 1990) and prior to each fiscal year thereafter in which the tax is imposed adopt a budget plan specifying how the proceeds of the tax shall be expended. Prior to the adoption of such budget plan, the county or municipality shall obtain from the authorized entity with which it proposes to contract to meet the expenditure requirements of this Code section a budget for expenditures to be made by such organization; and such budget shall be made a part of the county or municipal budget plan.

(B)(i) The determination as to whether a county or municipality has complied with the expenditure requirements of paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall be made for each fiscal year beginning on or after July 1, 1987, as of the end of each fiscal year, shall be prominently reflected in the audit required under Code Section 36-81-7, and shall disclose:

(I) The amount of funds expended or contractually committed for expenditure as provided in paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection, whichever is applicable, during the fiscal year;

(II) The amount of tax receipts under this Code section during such fiscal year; and

(III) Expenditures as a percentage of tax receipts.

(ii) A county or municipality contractually expending funds to meet the expenditure requirements of paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall require the contracting party to provide audit verification that the contracting party makes use of such funds in conformity with the requirements of this subsection. If the audit required by Code Section 36-81-7 identifies noncompliance with the applicable expenditure requirements of this Code section, such noncompliance shall be reported in accordance with paragraph (2) of subsection (c) of Code Section 36-81-7. The state auditor shall report all instances of noncompliance with this subparagraph noted in the audit report to the Department of Community Affairs upon completion of the report review required by paragraph (2) of subsection (d) of Code Section 36-81-7. The state auditor shall furnish a copy of all documents submitted by the

local government or the local government's auditor pertaining to noncompliance with this subparagraph to the Department of Revenue. The Department of Community Affairs shall submit a copy of such documents to the performance review board.

(10) Nothing in this article shall be construed to limit the power of a county or municipality to expend more than the required amounts, or all, of the total taxes collected under this Code section for the purposes described in paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection.

(11) Reserved.

(12) Reserved.

(b)(1) Except as provided in paragraphs (2) and (3) of subsection (a) of this Code section, any new excise taxes which are first levied pursuant to this Code section after July 1, 2008, or any new excise tax which is first levied following the termination of a previous levy pursuant to this Code section after July 1, 2008, shall be levied pursuant to this subsection.

(2) The governing authority of each municipality in this state may levy an excise tax pursuant to this subsection at a rate not to exceed 8 percent of the charge for the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly or periodically furnished for value.

(3) Within the territorial limits of the special district located within the county, each county in this state may levy an excise tax pursuant to this subsection at a rate not to exceed 8 percent of the charge for the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the county for operating within the special district a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly or periodically furnished for value.

(4) The levy of an excise tax pursuant to this subsection shall be conditioned upon the county or municipality adopting a resolution which specifies the subsequent tax rate, identifies the projects or tourism product development purposes, and specifies the allocation of proceeds and, subsequent to such resolution, the enactment of a local Act by the General Assembly.

(5) In accordance with the terms of the resolution adopted by the county or municipality, the local Act of the General Assembly shall provide that:

(A) In each fiscal year during which a tax is collected under paragraph (2) or (3) of this subsection, an amount equal to not less than 50 percent of the total amount of taxes collected that exceed the amount of taxes that would be collected at the rate of 5 percent shall be expended for promoting tourism, conventions, and trade shows by the destination marketing organization designated by the county or municipality levying the tax; and

(B) The remaining amount of taxes collected that exceed the amount of taxes that would be collected at the rate of 5 percent which are not otherwise expended under subparagraph (A) of this paragraph shall be expended for tourism product development.

(6) A county or municipality levying a tax pursuant to this subsection shall expend an amount equal to the amount of total taxes collected under this subsection which would have been collected at a rate of 5 percent in accordance with the provisions of paragraph (3) of subsection (a) of this Code section.

(7)(A) Any municipality which is levying an excise tax under paragraph (5) of subsection (a) of this Code section, so long as any obligation as described in division (a)(5)(A)(ii) or subparagraph (a)(5)(B) of this Code section remains outstanding, shall leave such excise tax in effect at the rate of 7 percent and may levy up to an additional 1 percent excise tax under this paragraph so long as the combined rate does not exceed 8 percent.

(B)(i) Such additional excise tax shall not be deemed to violate the provisions of subsection (d) of this Code section.

(ii) Such additional excise tax shall not count toward or be subject to the 14 percent rate limitations of subsection (c.1) of Code Section 48-8-6 and subsection (d) of Code Section 48-8-201.

(C) Any taxes collected in excess of 7 percent shall be expended by the municipality for the promotion of conventions and tradeshow by a not for profit destination marketing organization located within the municipality and in existence and operation on January 1, 2011, through a contract or contracts with the state, a department of state government, or a state authority. At least 80 percent of such tax amounts shall be segregated by the destination marketing organization and used in securing major conventions at facilities containing at least 1.3 million square feet of floor space used for convention hall purposes and events at facilities containing at least 70,000 seats used for major events under the control of

a state authority, and amounts so segregated may be held by the destination marketing organization and expended in fiscal years subsequent to the fiscal year in which the taxes were collected.

(D) Any municipal levy of any additional excise tax under this paragraph must be approved by local Act and shall also comply with the resolution requirements contained in paragraph (4) of this subsection in regard to the additional excise tax levied under this paragraph only. The local Act of the General Assembly shall provide that the first 7 percent in excise tax levied under the authority of paragraph (5) of subsection (a) of this Code section shall continue to be levied under that paragraph and all amounts collected thereunder shall be expended as required therein and that the additional amounts collected under the provisions of this paragraph shall be expended as required in this paragraph.

(b.1) As an alternative to the provisions of subsection (b) of this Code section, any county (within the territorial limits of the special district located within the county) and any municipality which is levying a tax under this Code section at the rate of 6 percent under paragraph (3.4) or (4) of subsection (a) of this Code section shall be authorized to levy a tax under this Code section at the rate of 7 percent in the manner provided in this subsection. Both the county and municipality shall adopt a resolution which shall specify that an amount equal to the total amount of taxes collected under such levy at a rate of 6 percent shall continue to be expended as it was expended pursuant to either paragraph (3.4) or (4) of subsection (a) of this Code section, as applicable, and such resolution shall specify the manner of expenditure of funds for an amount equal to the total amount of taxes collected under such levy that exceeds the amount that would be collected at the rate of 6 percent for any tourism, convention, or trade show purposes, tourism product development purposes, or any combination thereof. Each resolution shall be required to be ratified by a local Act of the General Assembly. Only when both such local Acts have become law, the governing authority of the county and municipality shall be authorized to levy an excise tax pursuant to this subsection at the rate of 7 percent of the charge for the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly or periodically furnished for value.

(c) Nothing in this article shall be construed to impair, or authorize or require the impairment of, any existing contract or contractual rights.

(d) At no time shall a county or municipality levy simultaneously more than one tax under this article.

(e)(1) Except as otherwise provided in paragraph (2) of this subsection, for any excise tax levied pursuant to subsection (b) of this Code section, a county or municipality imposing a tax under this article shall, prior to the imposition of the tax or changing the rate of the levy of the tax and prior to each fiscal year thereafter in which the tax is imposed, adopt a budget plan specifying how the proceeds of such tax are to be expended. Prior to the adoption of such budget plan, the county or municipality shall obtain from the destination marketing organization or state authority with which it proposes to contract to meet the expenditure requirements of this paragraph a budget plan for expenditures to be made by such organization. Such destination marketing organization or state authority expenditure budget plan shall be made a part of the county or municipal budget plan.

(2) This paragraph shall apply to a county or municipality which is levying the tax under subsection (a) of this Code section on January 1, 2008, and is expending the proceeds of the tax through a contract or contracts with an authorized entity or entities other than a destination marketing organization. In the event such county or municipality ceases such levy in order to levy an excise tax under subsection (b) of this Code section, it may continue to expend the proceeds of the tax through a contract or contracts with the same entity or entities other than a destination marketing organization if, prior to each fiscal year in which the tax is imposed, the county or municipality adopts a budget plan specifying how the proceeds of such tax are to be expended. Prior to the adoption of such budget plan, such county or municipality shall obtain from such entity or entities with which it proposes to contract to meet the expenditure requirements of this paragraph a budget plan for expenditures to be made by such entity or entities. The budget plan of such entity or entities shall be made a part of the county or municipal budget plan.

(f) A county or municipality expending funds of the tax levied under subsection (b) of this Code section pursuant to a contract shall require the destination marketing organization or state authority to provide audit verification that such destination marketing organization or state authority makes use of such funds in conformity with the requirements of this subsection. If the audit required by Code Section 36-81-7 identifies noncompliance with the applicable expenditure requirements of this Code section, such noncompliance shall be reported in accordance with paragraph (2) of subsection (c) of Code Section 36-81-7. The state auditor shall report all instances of noncompliance with this subsection noted in the audit report to the Department of Community Affairs upon completion of the report review required by paragraph (2) of subsection (d) of Code Section 36-81-7. The state auditor shall furnish a copy of all documents submitted by the local government or the local government's auditor pertaining to noncompliance with this subsection

to the Department of Community Affairs. The Department of Community Affairs shall submit a copy of such documents to the performance review board.

(g)(1) Any action by a local governing authority to impose or change the rate of the tax authorized under this article shall become effective no sooner than the first day of the second month following its action by the local governing authority.

(2) In the case of a county or municipality which has adopted an ordinance ceasing the levy under the applicable paragraph of subsection (a) of this Code section in order to levy an excise tax under subsection (b) of this Code section, such levy under subsection (b) of this Code section shall become effective no sooner than the first day of the second month following its action by the local governing authority.

(h) The tax authorized by this article shall not apply to:

(1) Charges made for any rooms, lodgings, or accommodations provided to any persons who certify that they are staying in such room, lodging, or accommodation as a result of the destruction of their home or residence by fire or other casualty;

(2) The use of meeting rooms and other such facilities or any rooms, lodgings, or accommodations provided without charge;

(3) Any rooms, lodgings, or accommodations furnished for a period of one or more days for use by Georgia state or local governmental officials or employees when traveling on official business. Notwithstanding the availability of any other means of identifying the person as a state or local government official or employee, whenever a person pays for any rooms, lodgings, or accommodations with a state or local government credit or debit card, such rooms, lodgings, or accommodations shall be deemed to have been furnished for use by a Georgia state or local government official or employee traveling on official business for purposes of the exemption provided by this paragraph. For purpose of the exemption provided under this paragraph, a local government official or employee shall include officials or employees of counties, municipalities, consolidated governments, or county or independent school districts; or

(4) Charges made for continuous use of any rooms, lodgings, or accommodations after the first 30 days of continuous occupancy.

(i) No tax under this article may be levied or collected by a county outside the territorial limits of the special district located within the county.

(j) Any requirement that a tax under this article be expended in the fiscal year in which it is collected shall be satisfied so long as fiscal year

expenditures conform with the budget plan required in either paragraph (9) of subsection (a) or subsection (e) of this Code section. (Ga. L. 1975, p. 1002, §§ 2, 3; Code 1933, § 91A-6202, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 639, § 1; Ga. L. 1987, p. 635, § 1; Ga. L. 1988, p. 1866, § 1; Ga. L. 1989, p. 1, § 1; Ga. L. 1989, p. 62, § 13; Ga. L. 1990, p. 1134, § 1; Ga. L. 1991, p. 292, §§ 1-5; Ga. L. 1992, p. 3035, §§ 1-4; Ga. L. 1993, p. 442, § 1; Ga. L. 1993, p. 995, §§ 3, 4; Ga. L. 1994, p. 793, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 578, §§ 1-4; Ga. L. 1996, p. 1407, §§ 1-5; Ga. L. 1997, p. 930, §§ 1-4; Ga. L. 1997, p. 959, §§ 1-4; Ga. L. 1997, p. 1417, §§ 1-4; Ga. L. 1998, p. 19, § 1; Ga. L. 1998, p. 894, §§ 1-4; Ga. L. 1999, p. 81, § 48; Ga. L. 1999, p. 663, § 1; Ga. L. 1999, p. 769, §§ 1-4; Ga. L. 2000, p. 214, §§ 1-8; Ga. L. 2000, p. 1303, § 1; Ga. L. 2000, p. 1325, § 1A; Ga. L. 2000, p. 1364, §§ 1-4; Ga. L. 2001, p. 1191, §§ 1-4; Ga. L. 2002, p. 979, §§ 1-4; Ga. L. 2004, p. 403, § 1; Ga. L. 2005, p. 532, § 1/HB 505; Ga. L. 2005, p. 1523, §§ 1-6/HB 374; Ga. L. 2006, p. 667, §§ 1-4/HB 1030; Ga. L. 2007, p. 47, § 48/SB 103; Ga. L. 2008, p. 181, § 23/HB 1216; Ga. L. 2008, p. 887, §§ 1, 2/HB 302; Ga. L. 2008, p. 1032, §§ 2-9, 12/HB 1168; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 809, §§ 1, 2, 3/HB 903; Ga. L. 2011, p. 517, § 1/HB 382; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2011 amendment, effective May 11, 2011, added paragraph (b)(7).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language throughout subsection (a).

Cross references. — Local government authority to enter into certain one year or less contracts, § 36-60-14. Regulation of operation of hotels, inns, and similar entities generally, T. 43, C. 21.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, “(a)(3.1),” was transferred to follow “(a)(3),” to maintain numerical order.

Pursuant to Code Section 28-9-5, in 1997, paragraph (4.2) of subsection (a) as added by Ga. L. 1997, p. 959, § 2 was redesignated as paragraph (4.3) of subsection (a), and paragraphs (4.2) and (4.3) of subsection (a) as added by Ga. L. 1997, p. 1417, § 2 were redesignated as paragraphs (4.4) and (4.5) of subsection (a), respectively. The internal references in subsection (a) were changed to reflect these redesignations.

Pursuant to Code Section 28-9-5, in 1999, “April 28, 1999” was substituted for “the effective date of this Act” in subparagraph (a)(4.6)(B).

Pursuant to Code Section 28-9-5, in 2001, “(3)” was deleted following “under this paragraph” in the second sentence of paragraph (a)(3.4).

The amendment of this Code section by Ga. L. 2008, p. 181, § 23, irreconcilably conflicted with and was treated as superseded by Ga. L. 2008, p. 1032, § 5. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2008, the subparagraph (C) designation in subparagraph (a)(1)(C) and the paragraph (8) designation in paragraph (a)(8) were inserted; in division (a)(3.8)(A)(ii), a period was substituted for a semicolon at the end; in paragraph (a)(4), parentheses were added around “III” and “IV”; and in subparagraph (a)(7)(A), quotation marks were inserted following “Fund”.

Editor’s notes. — Ga. L. 1989, p. 62, § 14, not codified by the General Assembly, provides: “In the event that any other Act of the 1989 General Assembly amends Article 3 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, it is the intention of the General Assembly that the provisions of such other Act control over the provisions of this Act, except that it is the intention of the General

Assembly that the increase in the rate of state sales and use taxation provided for in this Act shall not operate to decrease the maximum rate of taxes which may be imposed by local governments under said article as now existing or as it may be amended; and for this limited purpose, the provisions of this Act and particularly of this statement of intent shall control over the provisions of such other Act, notwithstanding any limitation on maximum aggregate amounts of taxation which may be contained in such other Act.”

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. Art. 3, Ch. 13, T. 48 does not violate the uniformity requirements of the state constitution and due process and equal protection guarantees of the state and federal constitutions, nor does the statute impermissibly burden interstate commerce. *Youngblood v. State*, 259 Ga. 864, 388 S.E.2d 671 (1990).

O.C.G.A. § 48-13-51(a)(5) merely makes clear that once the courts have validated a bond issue and the bonds have been issued, the state cannot impair the contract between the issuer and the bondholder. The statute does not violate the Abridged Powers Clause contained in Ga. Const. 1983, Art. III, Sec. VI, Para. III. *Youngblood v. State*, 259 Ga. 864, 388 S.E.2d 671 (1990).

“Stadium Funding Agreement” for construction of a domed facility, entered into by a city, a county, and a stadium authority, was authorized by the intergovernmental contracts clause of Ga. Const. 1983, Art. IX, Sec. III, Para. I, and therefore did not violate the special district debt clause of Ga. Const. 1983, Art. IX, Sec. V, Para. II. *Youngblood v. State*, 259 Ga. 864, 388 S.E.2d 671 (1990).

Collection of taxes. — Although online travel companies were not operators of hotels, the companies actually collected excise taxes from hotel guests, and thus the companies were required to remit those taxes to applicable Georgia cities and counties pursuant to O.C.G.A. §§ 48-13-50 and 48-13-51. *City of Rome v. Hotels.com, LP*, No. 4:05-CV-249-HLM, 2006 U.S. Dist. LEXIS 56369 (N.D. Ga. May 8, 2006).

Ga. L. 1996, p. 1407, § 3 amended paragraph (a)(5.1) by adding the proviso at the end of the fourth sentence. This proviso became effective upon ratification of House Resolution 728 (Ga. L. 1996, p. 1668) at the November 1996 election.

Law reviews. — For annual survey of state and local taxation, see 42 Mercer L. Rev. 421 (1990). For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

In a city’s action wherein the city filed a complaint seeking a declaratory judgment, injunctive relief, and other equitable remedies against an online travel company, the trial court did not err by requiring the company to collect tax payment obligations under the Enabling Statute, O.C.G.A. § 48-13-50 et seq., and a city’s ordinance via a permanent injunction. The company had contracted with the city to collect such taxes from the customers and was not an innkeeper; thus, the company was required to remit the taxes to the city. *Expedia, Inc. v. City of Columbus*, 285 Ga. 684, 681 S.E.2d 122 (2009).

Trial court did not err under O.C.G.A. § 48-13-51(a)(1)(B)(I) when the court determined that the rent for occupying a hotel room in a city was the room rate paid by a consumer, rather than the negotiated wholesale rate between an online travel company and a hotel, because the retail room rate was the taxable amount or rent under a city’s ordinance. *City of Atlanta v. Hotels.com*, 289 Ga. 323, 710 S.E.2d 766 (2011).

Determination as to whether tax applied to online travel companies had to be determined first. — Trial court erred by dismissing a city’s declaratory judgment action against several online travel companies for lack of subject matter jurisdiction, and the appellate court erred by affirming the dismissal as the issue of whether the city’s ordinance allowing the city to collect a hotel occupancy tax from the online travel companies was a contested issue in the matter

that neither lower court had determined. The legal question of whether the ordinance even applied to the online travel companies had to be determined before the city was required to submit to the administrative process set forth within the ordinance and the enabling statutes,

O.C.G.A. § 48-13-50 et seq. *City of Atlanta v. Hotels.com, L.P.*, 285 Ga. 231, 674 S.E.2d 898 (2009).

Cited in *City of Atlanta v. City of College Park*, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 95 et seq.

C.J.S. — 20 C.J.S., Counties, §§ 369 et seq., 382 et seq.

ALR. — Deductibility of other taxes or fees in computing excise or license taxes, 174 ALR 1263.

What constitutes a sale “at retail” within federal retailers’ excise tax statute (26 USC (IRC 1954) chap 31), 93 ALR2d 1120.

48-13-52. Allowance of percentage of tax collected as deduction to person reporting and paying tax; effect of delinquent payments; rate.

Each person collecting the tax authorized by this article shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if the amount due is not delinquent at the time of payment. The rate of the deduction shall be 3 percent of the amount due, but only if the amount due was not delinquent at the time of payment. (Ga. L. 1975, p. 1002, § 5; Code 1933, § 91A-6204, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 1, § 1; Ga. L. 1990, p. 1134, § 1; Ga. L. 1992, p. 815, § 5.)

RESEARCH REFERENCES

C.J.S. — 20 C.J.S., Counties, § 382 et seq.

48-13-53. Procedures.

Except as otherwise specifically provided in this article, the rate of taxation, the manner of imposition, payment, and collection of the tax, and all other procedures related to the tax shall be as provided by each county and municipality electing to exercise the powers conferred by this article. (Ga. L. 1975, p. 1002, § 4; Code 1933, § 91A-6203, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 1, § 1; Ga. L. 1990, p. 1134, § 1; Ga. L. 1998, p. 894, § 5; Ga. L. 2000, p. 1325, § 2.)

JUDICIAL DECISIONS

Determination as to whether tax applied to online travel company had to be determined first. — Trial court erred by dismissing a city's declaratory judgment action against several online travel companies for lack of subject matter jurisdiction, and the appellate court erred by affirming the dismissal as the issue of whether the city's ordinance allowing the city to collect a hotel occupancy tax from the online travel companies was

a contested issue in the matter that neither lower court had determined. The legal question of whether the ordinance even applied to the online travel companies had to be determined before the city was required to submit to the administrative process set forth within the ordinance and the enabling statutes, O.C.G.A. § 48-13-50 et seq. *City of Atlanta v. Hotels.com, L.P.*, 285 Ga. 231, 674 S.E.2d 898 (2009).

48-13-53.1. Innkeepers; selling or quitting business; withholding of purchase money by purchaser; liability of purchaser for failure to withhold purchase money.

If any innkeeper liable for any tax, interest, or penalty imposed by this article sells his or her business or quits the business, he or she shall make a final return and payment within 15 days after the date of selling or quitting the business. The innkeeper's successor or assigns, if any, shall withhold a sufficient amount of the purchase money to cover the amount of the taxes, interest, and penalties due under this article and unpaid until the former owner produces either a receipt from the governing authority imposing the tax showing that the taxes, interest, and penalties due under this article have been paid or a certificate from the governing authority imposing the tax stating that no tax, interest, or penalty is due under this article. If the purchaser of a business fails to withhold the purchase money as required by this Code section, he or she shall be personally liable for the payment of any taxes, interest, and penalties accruing under this article and unpaid by any former owner or assignor. The personal liability of the purchaser in such a case shall not exceed the amount of the total purchase money, but the property being transferred shall in all cases be subject to the full amount of the tax lien arising from the delinquencies of the former owner. Paid executions may be transferred and enforced as otherwise provided by law. (Code 1981, § 48-13-53.1, enacted by Ga. L. 2000, p. 1325, § 3.)

48-13-53.2. Innkeepers and taxes.

(a) Each innkeeper, on or before the twentieth day of each month, shall transmit returns and remit taxes due to any applicable governing authority imposing a tax under this article showing the gross charges taxable under this article during the preceding calendar month. The governing authority imposing the tax may provide by resolution or ordinance for quarterly or annual returns. The returns required by this subsection shall be made upon forms prescribed, prepared, and furnished by the governing authority imposing the tax.

(b) As used in this subsection, the term “estimated tax liability” means an innkeeper’s tax liability under this article, adjusted to account for any subsequent change in the rate of tax imposed under this article or any substantial change in circumstances due to damage to the premises, based on his or her average monthly payments for the last fiscal year. If the estimated tax liability of an innkeeper for any taxable period exceeds \$2,500.00, the innkeeper shall file a return and remit to the governing authority imposing the tax not less than 50 percent of the estimated tax liability for the taxable period on or before the twentieth day of the period. The amount of the payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section. This subsection shall not apply to any innkeeper unless during the previous fiscal year the innkeeper’s monthly payments exceeded \$2,500.00 per month for three consecutive months or more. (Code 1981, § 48-13-53.2, enacted by Ga. L. 2000, p. 1325, § 3.)

JUDICIAL DECISIONS

On line travel company not innkeeper and payment of taxes responsibility of company. — In a city’s action wherein the city filed a complaint seeking a declaratory judgment, injunctive relief, and other equitable remedies against an online travel company, the trial court did not err by requiring the company to collect tax payment obligations under the Enabling Statute, O.C.G.A. § 48-13-50 et

seq., and a city’s ordinance via a permanent injunction. The company had contracted with the city to collect such taxes from the customers and was not an innkeeper; thus, the company was required to remit the taxes to the city. *Expedia, Inc. v. City of Columbus*, 285 Ga. 684, 681 S.E.2d 122 (2009).

Cited in *City of Atlanta v. Hotels.com*, 289 Ga. 323, 710 S.E.2d 766 (2011).

48-13-53.3. Taxes; extensions and returns; failure of innkeeper to make return and pay required tax.

(a)(1) The governing authority imposing a tax under this article may, for good cause, extend the time for making any returns required under this article for not more than 30 days.

(2) No extension granted pursuant to paragraph (1) of this subsection shall be valid unless granted in writing upon written application, and then the extension shall only be valid for a period, as appropriate, of not more than 12 consecutive months or four consecutive calendar quarters.

(3) Upon the grant of any extension authorized by this subsection, the innkeeper shall remit to the governing authority imposing a tax under this article on or before the date the tax would otherwise become due without the grant of the extension an amount which equals not less than 100 percent of the innkeeper’s payment for the corresponding period of the preceding tax year.

(4) No interest or penalty shall be charged by reason of the granting of an extension pursuant to this subsection during the first ten days of each extension period. Thereafter, interest shall be collected upon the unpaid balance of the innkeeper's liability at the rate specified in Code Section 48-2-40.

(b) In the event any innkeeper fails to make a return and pay the tax as provided by this article or makes a grossly incorrect return or a return that is false or fraudulent, the governing authority imposing a tax under this article shall make an estimate for the taxable period of taxable charges of the innkeeper. Based upon its estimate, the governing authority shall assess and collect the taxes, interest, and penalties, as accrued, on the basis of the assessments. (Code 1981, § 48-13-53.3, enacted by Ga. L. 2000, p. 1325, § 3.)

JUDICIAL DECISIONS

Necessity to follow procedures before filing suit to collect tax. — Municipalities failed to exhaust administrative remedies prior to litigation to recover excise taxes from Internet travel agencies which arranged accommodation for their customers since the procedures of O.C.G.A. § 48-13-53.3(b) were not optional, and the municipalities were required to estimate, assess, and attempt to collect the excise taxes from the travel agencies before pursuing litigation. *City of Rome v. Hotels.com, L.P.*, No. 4:05-CV-249-HLM, 2007 U.S. Dist. LEXIS 98522 (N.D. Ga. May 10, 2007).

48-13-53.4. Records and books.

(a) Each innkeeper required to make a return and pay any tax under this article shall keep and preserve:

- (1) Suitable records of the charges taxable under this article; and
- (2) Other books of account which are necessary to determine the amount of tax due.

(b) All books, invoices, and other records required by this Code section to be kept shall be open to examination at all reasonable hours by the governing authority imposing a tax under this article. (Code 1981, § 48-13-53.4, enacted by Ga. L. 2000, p. 1325, § 3; Ga. L. 2001, p. 984, § 19.)

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 294 (2001).

48-13-53.5. Assessments.

Any assessment of an innkeeper pursuant to this article by the governing authority imposing a tax under this article shall be deemed

prima facie correct. (Code 1981, § 48-13-53.5, enacted by Ga. L. 2000, p. 1325, § 3.)

48-13-53.6. Unpaid tax.

The tax imposed by this article shall become delinquent for each month after the twentieth day of each succeeding month during which it remains unpaid. (Code 1981, § 48-13-53.6, enacted by Ga. L. 2000, p. 1325, § 3.)

48-13-54. Lodge operated under jurisdiction of Department of Natural Resources or other state authority; collection and remittance of tax; use of funds.

Any state park operated under the jurisdiction of the Department of Natural Resources, or a state authority that is administratively attached to the Department of Natural Resources, which state park or authority regularly furnishes for value lodge rooms as well as meals and conference or meeting facilities or has a minimum of 20 cabins and which rooms, facilities, or cabins located in a county or municipality levying a tax under this article shall, as provided in this Code section, agree to collect and remit to the county or municipality within whose taxing jurisdiction the facility is located amounts which are equal to, or partially equal to, the amounts which would be collected and remitted to the county or municipality under the tax levied by the county or municipality under Code Section 48-13-51 if such rooms, facilities, or cabins were privately operated. The sums so collected and remitted shall only be expended for development, promotion, and advertising of such rooms, facilities, or cabins from which the money was collected and remitted or for similar purposes of promoting, advertising, stimulating, and developing conventions and tourism in the county or municipality in which such rooms, facilities, or cabins of the state park or state authority are located so long as said promotion or advertising prominently features the state park or state authority rooms, facilities, or cabins. (Code 1981, § 48-13-54, enacted by Ga. L. 1990, p. 1134, § 1; Ga. L. 1991, p. 292, § 6; Ga. L. 2008, p. 1032, § 10/HB 1168.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, a subsection (a) designation was deleted from the beginning of the Code section since there is no subsection (b).

48-13-55. Facility operated by charitable trust or functionally related business; license fees; limitation on or applicability of tax levies.

(a) A charitable trust, or a functionally related business of a charitable trust, which regularly furnishes for value rooms, lodgings, or

accommodations shall be subject to local licensure by, or required to pay a business or occupation tax to, a county or municipality only to the extent provided in this Code section. Further, such a charitable trust, or such a functionally related business of a charitable trust, shall be subject to taxes levied under Code Section 48-13-51 only to the extent provided in this Code section.

(b) Any license fee of any type, whether a flat fee or based on gross receipts, charged by a county or municipality to a charitable trust, or to a functionally related business of a charitable trust or any affiliated activity, shall not exceed \$200.00 per year.

(c) Any tax levied by a county or municipality under Code Section 48-13-51 shall apply to a charitable trust, or a functionally related business of a charitable trust, only if the levy and collection of the tax is approved in advance in writing by the Board of Natural Resources. The Board of Natural Resources may revoke its approval at will. Amounts collected and remitted under the authority of this Code section shall be expended solely for promoting, attracting, stimulating, and developing conventions and tourism. The expenditure of the funds shall only be made under a written agreement between the charitable trust or its functionally related business and the local government. The agreement governing the expenditure of the funds must be approved in writing by the Board of Natural Resources before any taxes are collected and remitted and before any funds are spent.

(d) For purposes of this Code section, the term “charitable trust” means any trust or other entity covered by Article 9 or 10 of Chapter 12 of Title 53. For purposes of this Code section, the term “functionally related business” means a business entity, whether or not incorporated, which is owned by such a charitable trust and which constitutes a functionally related business within the meaning of Section 4942(j)(4) of the federal Internal Revenue Code.

(e) This Code section (rather than conflicting provisions in Code Section 48-13-51) shall govern the licenses and license fees of, and the levy, collection, and expenditure of the taxes authorized by this article as applied to, a charitable trust or a functionally related business of a charitable trust. (Code 1981, § 48-13-55, enacted by Ga. L. 1990, p. 1134, § 1; Ga. L. 1991, p. 810, § 8; Ga. L. 2010, p. 579, § 17/SB 131.)

48-13-56. Annual report to Department of Community Affairs.

Each county or municipality imposing a tax as authorized by this article shall, as a condition of continuing authorization to impose the tax, annually file with the Department of Community Affairs a report specifying the rate of taxation and amounts collected and expended pursuant to this article. Such report shall include the schedules

specified under subparagraph (b)(1)(B) of Code Section 36-81-8 and shall be filed in such form and at such times as may be specified by rule of the Department of Community Affairs. (Code 1981, § 48-13-56, enacted by Ga. L. 1990, p. 1134, § 1; Ga. L. 2004, p. 403, § 2.)

48-13-56.1. Hotel Motel Tax Performance Review Board; composition; appointments; investigations of complaints; expenses of members.

(a)(1) There is created the Hotel Motel Tax Performance Review Board which shall consist of 11 members.

(2) The commissioner of community affairs shall appoint five persons to serve as members of the performance review board as follows:

(A) A designee of the commissioner;

(B) A representative of the private sector tourism industry who shall be an innkeeper;

(C) A representative of municipal government;

(D) A representative of county government; and

(E) A representative of a destination marketing organization.

(3) The Governor shall appoint one member of the board.

(4) The Speaker of the House of Representatives shall appoint one member of the board.

(5) The Lieutenant Governor shall appoint one member of the board.

(6) The state auditor shall appoint one member of the board.

(7) The commissioner of economic development shall appoint one member of the board.

(8) The state revenue commissioner shall appoint one member of the board.

(b)(1) The member of the board who is appointed under subparagraph (a)(2)(A) of this Code section shall serve for a term of office of five years. Members of the board who are appointed under subparagraphs (a)(2)(B), (a)(2)(C), (a)(2)(D), and (a)(2)(E) of this Code section shall serve for terms of office of three years each. Members of the board who are appointed under paragraphs (3), (4), and (5) of subsection (a) of this Code section shall serve for terms of office of three years each. Members of the board who are appointed under paragraphs (6), (7), and (8) of subsection (a) of this Code section shall

serve for terms of office of five years each. Members of the board shall serve for the terms of office specified in this subsection and until their respective successors are appointed and qualified. Members of the board may be reappointed to the board upon the expiration of their terms of office if they otherwise continue to meet the qualifications for such office.

(2) If a vacancy occurs in the membership of the board, the appropriate appointing entity shall appoint a successor for the remainder of the unexpired term and until a successor is appointed and qualified.

(c) It shall be the duty of the performance review board to make a thorough and complete investigation of any complaint with respect to all actions of a county, municipality, or any other entity regarding its expenditure of funds received from a tax under this article and such county's, municipality's, or other entity's compliance with state law and regulations. Complaints may be received from taxpayers, local governments, innkeepers, or private sector nonprofit organizations. All complaints shall be received by the department by June 1 in order to be heard the following year. The performance review board shall meet annually from September 1 through December 1. The department shall send a notice to all interested parties of the meeting place and time. The performance review board shall issue a written report of its findings which shall include such evaluations, judgments, and recommendations as it deems appropriate.

(d) The findings of the report of the review board under subsection (c) of this Code section shall be transmitted to the commissioner of community affairs within 60 calendar days of hearing the complaint. The commissioner of community affairs shall have 30 calendar days to review the findings of the performance review board. If the commissioner of community affairs determines that remedial action is necessary, the subject of the complaint shall be issued a notice by certified mail, return receipt requested, or statutory overnight delivery and shall be given a period of 90 calendar days to take the necessary remedial action with respect to such findings. In the event that such remedial action does not occur within the specified period, the commissioner of community affairs shall immediately notify the state revenue commissioner, and the state revenue commissioner shall be authorized to take appropriate action to enforce compliance with such remedial action, up to and including termination of the tax.

(e) The commissioner of community affairs shall promulgate such rules and regulations as may be necessary for the administration of this Code section.

(f) Each member of the board shall receive the same per diem expense allowance as that received by members of the General Assem-

bly for each day a committee member is in attendance at a meeting of the committee, plus reimbursement for actual transportation costs incurred while traveling by public carrier or the mileage allowance authorized for certain state officials and employees for the use of a personal automobile in connection with such attendance. Such allowance and reimbursement shall be paid in lieu of any other per diem, allowance, or remuneration and shall be paid from funds appropriated to the Department of Community Affairs. (Code 1981, § 48-13-56.1, enacted by Ga. L. 2004, p. 403, § 3; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 532, § 2/HB 505; Ga. L. 2008, p. 1032, § 11/HB 1168.)

Cross references. — Annual local government finances reports and local independent authority indebtedness reports, § 36-81-8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, “economic

development” was substituted for “industry, trade, and tourism” in paragraph (a)(7) and “state revenue commissioner” was substituted for “commissioner of revenue” in paragraph (a)(8).

48-13-57. Provisions applying to taxes.

The provisions of Code Section 48-2-41, relating to authority to waive interest on unpaid taxes; Code Section 48-2-43, relating to authority to waive penalties; and Code Section 48-2-49, relating to periods of limitation for assessment of taxes imposed by this title, shall apply to taxes imposed by any local governing authority pursuant to this article, provided that the local governing authority shall stand in lieu of the commissioner, and the county or municipality shall stand in lieu of the state for purposes of this Code section. (Code 1981, § 48-13-57, enacted by Ga. L. 2000, p. 1325, § 4.)

48-13-58. Penalties added to tax for failure to pay.

(a) When any innkeeper fails to make any return or to pay the full amount of the tax required by this article, there shall be imposed, in addition to other penalties provided by law, a penalty to be added to the tax in the amount of 5 percent or \$5.00, whichever is greater, if the failure is for not more than 30 days and an additional 5 percent or \$5.00, whichever is greater, for each additional 30 days or fraction of 30 days during which the failure continues. The penalty for any single violation shall not exceed 25 percent or \$25.00 in the aggregate, whichever is greater. If the failure is due to providential cause shown to the satisfaction of the governing authority imposing a tax under this article in affidavit form attached to the return and remittance is made within ten days of due date, the return may be accepted exclusive of penalties and interest. In the case of a false or fraudulent return or of a failure to file a return where willful intent exists to defraud the governing authority of any tax due under this article, a penalty of 50 percent of the tax due shall be assessed.

(b) All civil penalties and interest added to any tax imposed under this article and collected by a county or municipality shall be included as revenue derived from such tax for purposes of the expenditure requirements imposed on such county or municipality as provided by this article. (Code 1981, § 48-13-58, enacted by Ga. L. 2000, p. 1325, § 4.)

JUDICIAL DECISIONS

Determination as to whether tax applied to online travel had to be determined first. — Trial court erred by dismissing a city’s declaratory judgment action against several online travel companies for lack of subject matter jurisdiction, and the appellate court erred by affirming the dismissal as the issue of whether the city’s ordinance allowing the city to collect a hotel occupancy tax from the online travel companies was a con-

tested issue in the matter that neither lower court had determined. The legal question of whether the ordinance even applied to the online travel companies had to be determined before the city was required to submit to the administrative process set forth within the ordinance and the enabling statutes, O.C.G.A. § 48-13-50 et seq. *City of Atlanta v. Hotels.com, L.P.*, 285 Ga. 231, 674 S.E.2d 898 (2009).

48-13-58.1. Criminal penalties for failure to make return or pay taxes.

(a) It shall be unlawful for any innkeeper to fail to make a return and pay the taxes due under this article to any applicable governing authority imposing a tax under this article.

(b)(1) If the tax liability is \$10,000.00 or less, any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

(2) If the tax liability is more than \$10,000.00, any person who violates subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years. (Code 1981, § 48-13-58.1, enacted by Ga. L. 2002, p. 523, § 1.)

Editor’s notes. — Ga. L. 2002, p. 523, § 2, not codified by the General Assembly, provides that this Code section is applicable with respect to offenses committed on

or after July 1, 2002. Prior law shall continue to apply with respect to any offense committed prior to July 1, 2002.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Of-

fense resulting from a violation of O.C.G.A. § 48-13-58.1(b)(1) does not re-

quire fingerprinting. 2002 Op. Att’y Gen. No. 2002-7.

48-13-59. Failure to collect taxes; punishment.

(a) It shall be unlawful for any innkeeper to fail, neglect, or refuse to collect the tax provided in this article, either by himself or herself or through his or her agents or employees.

(b) In addition to the penalty of being liable for and paying the tax himself or herself, any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$100.00 or imprisonment in the county jail for not more than three months, or both. (Code 1981, § 48-13-59, enacted by Ga. L. 2000, p. 1325, § 4.)

JUDICIAL DECISIONS

Determination as to whether tax applied to online travel company had to be determined first. — Trial court erred by dismissing a city's declaratory judgment action against several online travel companies for lack of subject matter jurisdiction, and the appellate court erred by affirming the dismissal as the issue of whether the city's ordinance allowing the city to collect a hotel occupancy tax from the online travel companies was

a contested issue in the matter that neither lower court had determined. The legal question of whether the ordinance even applied to the online travel companies had to be determined before the city was required to submit to the administrative process set forth within the ordinance and the enabling statutes, O.C.G.A. § 48-13-50 et seq. *City of Atlanta v. Hotels.com, L.P.*, 285 Ga. 231, 674 S.E.2d 898 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 48-13-59 is not an offense designated as

one that requires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.

48-13-60. Unlawful returns; punishment.

(a) It shall be unlawful for any innkeeper required by this article to make, render, sign, or verify any return to make a false or fraudulent return with intent to evade the tax levied by this article.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100.00 nor more than \$300.00 or confinement in the county jail for not less than 30 days nor more than three months, or both fine and confinement. (Code 1981, § 48-13-60, enacted by Ga. L. 2000, p. 1325, § 4.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders required. — Violation of O.C.G.A. § 48-13-60 is an offense designated as one

that requires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.

48-13-61. Failure to furnish return; punishment.

(a) It shall be unlawful for any innkeeper subject to this article to fail or refuse to furnish any return required to be made by this article or to fail or refuse to furnish a supplemental return or other data required by the governing authority imposing a tax under this article.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 48-13-61, enacted by Ga. L. 2000, p. 1325, § 4.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 48-13-61 is not an offense designated as one that requires fingerprinting. 2000 Op. Att’y Gen. No. 2000-11.

48-13-62. Failure to keep and open records; punishment.

(a) It shall be unlawful for any innkeeper subject to this article to fail to keep records or to fail to open the records to inspection as required by law.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 48-13-62, enacted by Ga. L. 2000, p. 1325, § 4.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 48-13-62 is not an offense designated as one that requires fingerprinting. 2000 Op. Att’y Gen. No. 2000-11.

48-13-63. Other violations; punishment.

(a) It shall be unlawful for any innkeeper to violate any other provision of this article for which punishment is not otherwise provided.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 48-13-63, enacted by Ga. L. 2000, p. 1325, § 4.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 48-13-63 is not an offense designated as one that requires fingerprinting. 2000 Op. Att’y Gen. No. 2000-11.

ARTICLE 4

CORPORATE NET WORTH TAX

Law reviews. — For article, “Primary Tax Incentives for Industrial Investment in the Southeastern United States,” see 25 Emory L.J. 789 (1976).

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the provisions, opinions under former Code 1933, Ch. 92-24, which was subsequently repealed but was succeeded by provisions in this article, are included in the annotations for this article.

For example of cooperative marketing corporation which is exempt from franchise and license taxes, except for \$10.00 annual license tax, see 1962 Op. Att’y Gen. p. 512 (decided under former Code 1933, § 92-24).

RESEARCH REFERENCES

ALR. — Doctrine of unity of use for purposes of taxation as applied to manufacturing or industrial concerns, 27 ALR 906.

Tax on corporations as affected by fact that corporation is not actually engaged in or carrying on business for which it was incorporated, 124 ALR 1109.

Liability of corporation which has previously paid franchise fee or tax on authorized or issued stock, for additional fee or tax on later increase after intermediate reduction, 16 ALR2d 1090.

48-13-70. Definition.

As used in this article, the term “corporation” includes, but is not limited to, associations, professional associations organized pursuant to Chapter 10 of Title 14, and insurance companies. (Ga. L. 1931, Ex. Sess., p. 24, § 2; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3002; Ga. L. 1962, p. 454, § 1; Code 1933, § 91A-6301, enacted by Ga. L. 1978, p. 309, § 2.)

Law reviews. — For article, “Business Entities,” see 9 Ga. St. B.J. 24 (2004). “Post-Creation Checklist for Georgia

RESEARCH REFERENCES

ALR. — Meaning of association or joint stock company within statutes taxing associations or joint stock companies as corporations (“Massachusetts” or business trusts), 108 ALR 340; 144 ALR 1050; 166 ALR 1461.

48-13-71. Organizations and companies exempt from corporate net worth tax.

The following are exempt from the payment of the tax imposed by this article:

(1) Those organizations not organized for pecuniary gain or profit; and

(2) Insurance companies which are separately taxed. (Code 1933, § 92-2406, enacted by Ga. L. 1975, p. 147, § 1; Code 1933, § 92-2406.1, enacted by Ga. L. 1975, p. 147, § 2; Ga. L. 1976, p. 405, §§ 7, 8; Code 1933, § 92-2405, enacted by Ga. L. 1976, p. 1580, § 5; Code 1933, § 91A-6303, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1350, § 13.)

Editor's notes. — Ga. L. 1983, p. 1350, § 15, effective January 1, 1984, provides that, should subsection (e) of § 48-6-93 or paragraph (b)(11) of § 48-7-21 be declared invalid or unconstitutional, it is the intent of the General Assembly that the entire Act be held invalid and that the method of

taxation affected by the Act revert to the method in effect prior to January 1, 1984.

Law reviews. — For article, "Why Captives, Lord, What Have They Ever Done?: The Georgia Captive Insurance Company Act," see 26 Ga. St. B.J. 119 (1990).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1952, p. 371, § 1, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Taxation of association all of whose shareholders are exempt, nonprofit organizations. — Association engaged in the business of owning and operating a building which the association maintains, operates, keeps in repair, and rents to tenants and the income from which the association distributes among the association's shareholders, all of which are labor unions which are nontaxable and nonprofit organizations, which under the association's charter had as the association's objects pecuniary gain to the stockholders advancement of their social, ethical, and

economical well-being and interests and promotion of the cause of organized labor was not entitled to exemption under former version of this section as a corporation not organized for pecuniary gain or profit. *Atlanta Labor Temple Ass'n v. Williams*, 98 Ga. App. 179, 105 S.E.2d 406 (1958) (decided under former Ga. L. 1952, p. 371, § 1).

Organization of a corporation for nonprofit purposes is controlling in determining liability. — Purpose for which a corporation was organized, and not the question of whether it does in fact make a profit, or seek to make a profit, must control in a determination of tax liability. *Atlanta Labor Temple Ass'n v. Williams*, 98 Ga. App. 179, 105 S.E.2d 406 (1958) (decided under former Ga. L. 1952, p. 371, § 1).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Ga. L. 1952, p. 371, § 1, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Foreign corporation organized under the laws of another state, territory, or nation, not for pecuniary gain or profit, is

exempt. 1952-53 Op. Att'y Gen. p. 183 (decided under former Ga. L. 1952, p. 371, § 1).

Credit bureau incorporated under the laws of this state for the purpose of collecting accounts for the bureau's members is not exempt as a corporation not organized for pecuniary gain or profit. 1952-53 Op. Att'y Gen. p. 433 (decided under former Ga. L. 1952, p. 371, § 1).

State and federal credit unions are exempt under present laws from the corporate net worth tax. 1965-66 Op. Att'y Gen. No. 66-92 (decided under former Ga. L. 1952, p. 371, § 1).

Taxation of holding companies. — Though state banks and trust companies are exempt from corporation occupation tax, holding company holding and owning real property used by bank and trust

company is not exempt. 1962 Op. Att'y Gen. p. 493 (decided under former Ga. L. 1952, p. 371, § 1).

No refund on liquidation or merger. — Corporation that liquidates or merges with another corporation during a taxable year is not entitled to a refund of a pro rata part of the corporate net worth tax. 1969 Op. Att'y Gen. No. 69-481 (decided under former Ga. L. 1952, p. 371, § 1).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 269 et seq.

C.J.S. — 84 C.J.S., Taxation, §§ 184 et seq., 206 et seq., 320 et seq.

ALR. — Applicability of state license tax law to property or business of individual on land owned by federal government, 46 ALR 224.

Discrimination in state taxation of na-

tional banks or national bank shares, 59 ALR 10; 81 ALR 502; 87 ALR 846.

Exemption of charitable organization from taxation or special assessment, 108 ALR 284.

Hospital as within tax exemption provision not specifically naming hospitals, 144 ALR 1483.

48-13-72. Imposition of annual corporate net worth tax on all corporations doing business or owning property in state.

In addition to all other taxes imposed by law, there is imposed an annual corporate net worth tax on all corporations incorporated under the laws of this state, all domesticated foreign corporations, and all corporations incorporated or organized under the laws of any other state, territory, or nation doing business or owning property in this state for the privilege of carrying on a business within this state in the corporate form. (Ga. L. 1929, p. 84, § 1; Ga. L. 1931, Ex. Sess., p. 76, § 1; Code 1933, § 92-2401; Ga. L. 1935, p. 11, § 2; Ga. L. 1941, p. 204, § 1; Ga. L. 1951, p. 157, § 5a; Ga. L. 1952, p. 371, § 1; Code 1933, § 92-2401, enacted by Ga. L. 1976, p. 1580, § 1; Code 1933, § 91A-6302, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 107.)

Law reviews. — For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973).

JUDICIAL DECISIONS

"Doing business" standard compares with due process. — Phrase "doing business" in former Code 1933, §§ 92-2401 and 92-3113 (see O.C.G.A. §§ 48-7-31 and 48-13-72 et seq.), which

means any activity or transactions for the purpose of financial profit or gain, does not violate the due process requirement of either U.S. Const., amend. 14 or Ga. Const. 1976, Art. I, Sec. I, Para. I (see Ga.

Const. 1983, Art. I, Sec. I, Para. I). Chattanooga Glass Co. v. Strickland, 244 Ga. 603, 261 S.E.2d 599 (1979).

“Doing business” means any activity or transaction for the purpose of financial profit or gain. Chattanooga Glass Co. v. Strickland, 244 Ga. 603, 261 S.E.2d 599 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Tax imposed by this section is not a tax on doing business but is an annual tax on the privilege of being incorporated. 1957 Op. Att’y Gen. p. 282.

Liability for the tax first attaches on the date of incorporation. — Fact that a corporation does nothing further is not material, and should not be, since the mere preemption of a corporate name is a benefit flowing from incorporation even when nothing further is done. Moreover, since the statute provides a minimum tax of \$10.00 the fact that no capitalization takes place and no money is paid into the corporation is also ineffective to deny liability for the \$10.00 minimum tax. 1957 Op. Att’y Gen. p. 282.

Georgia corporation is taxable, even though the corporation is not doing business. 1954-56 Op. Att’y Gen. p. 703.

Doing business and owning of property in state not required for taxation. — Corporation organized under Georgia law is liable for the corporate net worth tax even though the corporation is doing no business in this state and owns no property herein. Such a corporation would be subject to the tax based on the corporation’s entire net worth. 1967 Op. Att’y Gen. No. 67-199.

No refund upon liquidation or merger. — Corporation that liquidates or merges with another corporation during a taxable year is not entitled to a refund of a pro rata part of the annual corporate net worth tax. 1969 Op. Att’y Gen. No. 69-481.

Taxation of holding companies. — Though state banks and trust companies are exempt from corporation net worth tax, a holding company holding and owning real property used by a bank and trust company is not exempt. 1962 Op. Att’y Gen. p. 493.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 170 et seq.

C.J.S. — 84 C.J.S., Taxation, § 166 et seq.

ALR. — Stock contemplated by statute imposing tax upon, or measuring it by, capital stock, 89 ALR 858; 153 ALR 693.

48-13-73. Amount of corporate net worth tax; amount for taxable period less than six months.

(a) The tax imposed by this article shall be based upon corporate net worth according to the following table:

<u>Corporations with Net Worth</u> <u>Including Issued Capital Stock,</u> <u>Paid-in Surplus, and Earned Surplus</u>	<u>Amount</u> <u>of</u> <u>Tax</u>
Not exceeding \$10,000.00	\$ 10.00
Over \$10,000.00 and not exceeding \$25,000.00	20.00

Over \$25,000.00 and not exceeding \$40,000.00	40.00
Over \$40,000.00 and not exceeding \$60,000.00	60.00
Over \$60,000.00 and not exceeding \$80,000.00	75.00
Over \$80,000.00 and not exceeding \$100,000.00	100.00
Over \$100,000.00 and not exceeding \$150,000.00	125.00
Over \$150,000.00 and not exceeding \$200,000.00	150.00
Over \$200,000.00 and not exceeding \$300,000.00	200.00
Over \$300,000.00 and not exceeding \$500,000.00	250.00
Over \$500,000.00 and not exceeding \$750,000.00	300.00
Over \$750,000.00 and not exceeding \$1,000,000.00	500.00
Over \$1,000,000.00 and not exceeding \$2,000,000.00	750.00
Over \$2,000,000.00 and not exceeding \$4,000,000.00	1,000.00
Over \$4,000,000.00 and not exceeding \$6,000,000.00	1,250.00
Over \$6,000,000.00 and not exceeding \$8,000,000.00	1,500.00
Over \$8,000,000.00 and not exceeding \$10,000,000.00	1,750.00
Over \$10,000,000.00 and not exceeding \$12,000,000.00 ...	2,000.00
Over \$12,000,000.00 and not exceeding \$14,000,000.00 ...	2,500.00
Over \$14,000,000.00 and not exceeding \$16,000,000.00 ...	3,000.00
Over \$16,000,000.00 and not exceeding \$18,000,000.00 ...	3,500.00
Over \$18,000,000.00 and not exceeding \$20,000,000.00 ...	4,000.00
Over \$20,000,000.00 and not exceeding \$22,000,000.00 ...	4,500.00
Over \$22,000,000.00	5,000.00

(b) With respect to any corporation coming into existence or becoming subject to the tax for the first time for an initial taxable period of less than six months, the tax imposed for such period shall be 50 percent of the tax imposed by this article for an entire year. (Ga. L. 1929, p. 84, § 1; Ga. L. 1931, Ex. Sess. p. 76, § 1; Code 1933, §§ 92-2401, 92-2403; Ga. L. 1935, p. 11, § 2; Ga. L. 1941, p. 204, § 1; Ga. L. 1951, p. 157, § 5a; Ga. L. 1952, p. 371, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 290, § 6; Ga. L. 1953, Jan.-Feb. Sess., p. 295, § 1; Code 1933, § 92-2401, enacted by Ga. L. 1976, p. 1580, § 1; Code 1933, § 91A-6304, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 108.)

OPINIONS OF THE ATTORNEY GENERAL

Corporation must pay a minimum tax of \$10.00, even though the corporation has a negative net worth.

1954-56 Op. Att'y Gen. p. 706.

No refund on liquidation or merger.

— Corporation that liquidates or merges

with another corporation during a taxable year is not entitled to a refund of a pro rata part of the annual corporate license or occupation tax. 1969 Op. Att'y Gen. No. 69-481.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 173 et seq., 186 et seq.

48-13-74. Determination of net worth of corporation; determination by commissioner absent disclosure of true net worth on corporation's books or return.

For the purpose of ascertaining the corporate net worth tax imposed by this article, the net worth of the corporation shall be presumed to be the net worth as disclosed on the corporation's books and as reflected on the return required to be filed annually by the corporation. In the event the commissioner ascertains that the books of any corporation reporting under this article or the return filed for any corporation reporting under this article, as provided in Code Section 48-13-77, does not disclose the true net worth of the corporation, the net worth of the corporation shall have the value fixed by the commissioner from any information obtained by the commissioner from any source. (Ga. L. 1929, p. 84, § 1; Ga. L. 1931, Ex. Sess., p. 76, § 1; Code 1933, § 92-2401; Ga. L. 1935, p. 11, § 2; Ga. L. 1951, p. 157, § 5a; Ga. L. 1952, p. 371, § 1; Code 1933, § 92-2401, enacted by Ga. L. 1976, p. 1580, § 1; Code 1933, § 91A-6305, enacted by Ga. L. 1978, p. 309, § 2.)

Law reviews. — For article discussing and the assessment of corporate franchise recordation of unrealized appreciation tax, see 25 Ga. B.J. 152 (1962).

JUDICIAL DECISIONS

Term "net worth" is the difference between assets and liabilities. Oxford v. Macon Tel. Publishing Co., 104 Ga. App. 788, 123 S.E.2d 277 (1961).

"Net worth" and "true net worth" not limited to issued capital stock, paid-in surplus, and earned surplus.

— Measure of this tax shall be the true net worth of the corporation and the particular expression "including issued capital stock, paid-in surplus and earned surplus" following the words "net worth" in no

way limits the meaning of the term "net worth" or "true net worth" as found in other parts of former Code 1933, Ch. 92-24. Oxford v. Macon Tel. Publishing Co., 104 Ga. App. 788, 123 S.E.2d 277 (1961).

Increase in valuation, known as "revaluation surplus," is part of the net assets or net worth of a corporation, and is included in the true net worth of the corporation as part of the measure of the corporate franchise tax imposed by this

section when such "revaluation surplus" is included in the regular balance sheets of the corporation. *Oxford v. Macon Tel. Pub-*

lishing Co., 104 Ga. App. 788, 123 S.E.2d 277 (1961).

RESEARCH REFERENCES

C.J.S. — 84 C.J.S., Taxation, § 530 et seq.

ALR. — Transactions between affiliated corporations as basis of "bad debt" deduction in computing income tax or corporate franchise tax, 128 ALR 1251.

Inclusion of investments in stock of other corporations in fixing base for taxation of corporation, 11 ALR2d 323.

48-13-75. Apportionment of net worth of foreign corporation; formula; determination of receipts derived from business in state; fixing value of capital stock; alternate method.

(a) For the purpose of ascertaining the corporate net worth tax imposed on a foreign corporation subject to the tax, the corporation shall be deemed to have employed in this state that proportion of its entire outstanding issued capital stock and surplus which its assets in this state and the gross receipts of business done in this state bear to all of its assets and the total gross receipts of business done by the corporation. Receipts shall be deemed to have been derived from business done within this state only if received from products shipped to customers in this state or delivered within this state to customers. In determining gross receipts within this state, receipts from sales negotiated or effected through offices of the taxpayer outside the state and delivered from storage from within the state to customers outside the state shall be excluded. Capital stock having no nominal or par value shall be deemed to have the value fixed for the stock by the commissioner from the information contained in the return to be filed by the corporation as provided in Code Section 48-13-77 and from any other information available to the commissioner.

(b) The commissioner may provide by regulation for an alternate method for apportionment of the net worth of a foreign corporation to this state when the formula set forth in subsection (a) of this Code section does not accurately reflect the volume of business done in this state in relation to the total volume of business done by the foreign corporation. (Ga. L. 1929, p. 84, § 1; Ga. L. 1931, Ex. Sess., p. 76, § 1; Code 1933, § 92-2401; Ga. L. 1935, p. 11, § 2; Ga. L. 1951, p. 157, § 5a; Ga. L. 1952, p. 371, § 1; Code 1933, § 92-2401, enacted by Ga. L. 1976, p. 1580, § 1; Code 1933, § 91A-6306, enacted by Ga. L. 1978, p. 309, § 2.)

Law reviews. — For article discussing taxation of foreign businesses in Georgia, see 27 Mercer L. Rev. 629 (1976). For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 194 et seq.

C.J.S. — 84 C.J.S., Taxation, §§ 218 et seq., 530 et seq.

ALR. — Stock in another corporation owned by foreign corporation as included in the property which measures the privilege tax payable by latter, 49 ALR 1296.

Constitutionality of excise or franchise tax on foreign corporation as affected by inclusion or exclusion of intangible measuring or computing tax, 131 ALR 940.

What constitutes a sale "at retail" within federal retailers' excise tax statute (26 USC (IRC 1954) chap 31), 93 ALR2d 1120.

48-13-76. Corporate net worth tax due on first day of tax period; determination of annual tax period; determination of first tax period.

(a) The corporate net worth tax imposed shall be due on the first day of the tax period. The annual tax period shall be the same as the annual tax period adopted by the corporation for state income tax purposes as provided by law. If a corporation does not return income taxes to this state, the tax period shall begin on January 1 and end on December 31 of each calendar year.

(b) The first tax period of a corporation coming into existence or otherwise becoming subject to the tax for the first time shall begin on the date of incorporation or of first becoming subject to the tax and shall end on the day immediately preceding the beginning of the regular annual tax period provided in subsection (a) of this Code section. (Ga. L. 1929, p. 84, § 1; Ga. L. 1931, Ex. Sess., p. 76, § 1; Code 1933, § 92-2401; Ga. L. 1935, p. 11, § 2; Ga. L. 1951, p. 157, § 5a; Ga. L. 1952, p. 371, § 1; Ga. L. 1957, p. 107, § 1; Ga. L. 1965, p. 344, § 1; Ga. L. 1976, p. 1580, § 1; Code 1933, § 91A-6307, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 109.)

48-13-77. Corporate net worth tax return and payment; procedure; combining net worth tax return with state income tax return.

Each corporation subject to the tax imposed by this article shall file a return and pay the tax due on the fifteenth day of the third calendar month following the beginning of its tax period. The commissioner may authorize combining the return required by this Code section with the state income tax return required by law. The return shall be signed and sworn to by an officer of the corporation and shall be forwarded to the commissioner. (Code 1933, § 92-2402, enacted by Ga. L. 1976, p. 1580,

§ 2; Code 1933, § 91A-6308, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 1118, § 1.)

Editor's notes. — Ga. L. 1989, p. 1118, Code section by the Act shall apply to tax § 3, not codified by the General Assembly, years beginning on and after January 1, provides that the amendments to this 1989.

RESEARCH REFERENCES

C.J.S. — 84 C.J.S., Taxation, § 618 et seq.

48-13-78. Period for payment of tax; effect.

The tax imposed by this article shall be paid to the commissioner on or before the fifteenth day of the third calendar month beginning with the first calendar month of the tax period. Except as otherwise provided by law, the payment of the tax shall authorize the corporation to exercise the privilege provided in Code Section 48-13-72 in any county of this state. The payment of this tax shall not be construed to relieve a corporation or its agents of any other license or occupation tax. (Ga. L. 1927, p. 56, § 6; Ga. L. 1929, p. 84, § 2; Ga. L. 1931, Ex. Sess., p. 76, § 1; Code 1933, § 92-2404; Ga. L. 1935, p. 11, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 285, § 1; Ga. L. 1971, p. 662, §§ 1, 2; Ga. L. 1972, p. 491, § 1; Code 1933, § 92-2403, enacted by Ga. L. 1976, p. 1580, § 3; Code 1933, § 91A-6309, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 1118, § 2.)

Editor's notes. — Ga. L. 1989, p. 1118, Code section by the Act shall apply to tax § 3, not codified by the General Assembly, years beginning on and after January 1, provides that the amendments to this 1989.

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, § 991 et seq.

48-13-79. Penalties; failure to file timely; extensions; failure to pay timely; interest.

(a) Each corporation subject to this article which fails to file timely the returns required by this article shall become liable for a penalty of 10 percent of the tax. The penalty shall be collected in the same manner as the tax is collected. The commissioner shall have the authority to extend the time for filing the return when good cause for the extension is shown.

(b) Should the tax imposed by this article remain unpaid after the date prescribed for payment, the delinquent corporation liable for the

tax shall be subject to and shall pay, in addition to other penalties incurred, a penalty of 10 percent of the tax for failure to pay the tax when due.

(c) Any tax imposed by this article which remains unpaid after the date prescribed for payment shall bear interest at the rate specified in Code Section 48-2-40 until paid. The interest shall be in addition to all other penalties prescribed by law and shall be collected in the same manner as the tax imposed by this article. (Ga. L. 1935, p. 11, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 290, §§ 3, 4; Ga. L. 1947, p. 107, §§ 3, 4; Code 1933, § 92-2404, enacted by Ga. L. 1976, p. 1580, § 4; Code 1933, § 91A-6310, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 41.)

RESEARCH REFERENCES

C.J.S. — 85 C.J.S., Taxation, § 1712 et seq.

ARTICLE 5

EXCISE TAXES ON RENTAL MOTOR VEHICLES

48-13-90. Legislative purpose and intent.

It is declared to be the purpose and intent of the General Assembly that:

(1) Each county and municipality in this state shall be authorized to levy certain excise taxes as provided in this article; and

(2) Funds derived from such tax shall be made available for the purpose of promoting industry, trade, commerce, and tourism; for the provision of convention, trade, sports, and recreational facilities; and for public safety purposes. (Code 1981, § 48-13-90, enacted by Ga. L. 1996, p. 1639, § 1.)

48-13-91. Definitions.

As used in this article, the term:

(1) “Rental charge” means the total value received by a rental motor vehicle concern for the rental or lease for 31 or fewer consecutive days of a rental motor vehicle, including the total cash and nonmonetary consideration for the rental or lease including, but not limited to, charges based on time or mileage and charges for insurance coverage or collision damage waiver but excluding all charges for motor fuel taxes or sales taxes.

(2) "Rental motor vehicle" means a motor vehicle designed to carry ten or fewer passengers and used primarily for the transportation of persons that is rented or leased without a driver regardless of whether such vehicle is licensed in this state.

(3) "Rental motor vehicle concern" means a person or legal entity which owns or leases five or more rental motor vehicles and which regularly rents or leases such vehicles to the public for value. (Code 1981, § 48-13-91, enacted by Ga. L. 1996, p. 1639, § 1.)

48-13-92. Special districts.

Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. One such district shall exist within the geographical boundaries of each county, and the territory of each district shall include all of the territory within the county except territory located within the boundaries of any municipality that imposes an excise tax on charges to the public for the rental or lease of rental motor vehicles under this article. (Code 1981, § 48-13-92, enacted by Ga. L. 1996, p. 1639, § 1.)

48-13-93. Levy and collection of excise taxes upon motor vehicle rental charges; expenditure of taxes; purpose.

(a)(1) The governing authority of each municipality in this state may levy and collect an excise tax upon the rental charge collected by a rental motor vehicle concern when such charge constitutes a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of this title. Within the territorial limits of the special district located within the county, each county in this state may levy and collect an excise tax upon the rental charge collected by a rental motor vehicle concern when such charge constitutes a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of this title. The tax levied pursuant to this article shall be levied or collected at the rate of 3 percent of the rental charges. The tax levied pursuant to this article shall be imposed only at the time when and place where a customer pays sales tax with respect to the rental charge. The customer who pays a rental charge that is subject to a tax levied as provided in this article shall be liable for the tax. The tax shall be paid by the customer to the rental motor vehicle concern. The tax shall be a debt of the customer to the rental motor vehicle concern until it is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts. The rental motor vehicle concern collecting the tax shall remit the tax to the governing authority imposing the tax, and the tax remitted shall be a credit

against the tax imposed on the rental motor vehicle concern. Every rental motor vehicle concern subject to a tax levied as provided in this article shall be liable for the tax at the applicable rate on the charges actually collected or the amount of taxes collected from the customers whichever is greater.

(2) A county or municipality levying an excise tax as provided in paragraph (1) of this subsection shall only levy such tax by ordinance which shall specify with particularity the authorized projects or purposes, or both, for which proceeds of the tax are to be expended and shall apply in each fiscal year during which the tax is collected such tax proceeds for the purpose of:

(A) Promoting industry, trade, commerce, and tourism;

(B) Capital outlay projects consisting of the construction of convention, trade, sports, and recreational facilities, or public safety facilities, including the acquiring, constructing, renovating, improving, and equipping of parking facilities, pedestrian walkways, plazas, connections, and other public improvements associated with such convention, trade, sports, and recreational facilities or public safety facilities or the retirement of debt issued with respect to such capital outlay projects; and

(C) Maintenance and operation expenses or security and public safety expenses associated with capital outlay projects funded pursuant to subparagraph (B) of this paragraph.

(3) Amounts collected pursuant to this article may be expended pursuant to a contract or contracts with a county, municipality, development authority, downtown development authority, urban redevelopment authority, recreation authority, or any combination of two or more of such entities. Nothing in this article shall be construed to limit the formation of intergovernmental contracts pursuant to the authority granted by Article IX, Section III, Paragraph I of the Constitution of this state to accomplish the purposes described in paragraph (2) of this subsection including the construction and maintenance of facilities located outside the special district within which the excise tax is levied and collected and which benefit the special district.

(4) Any tax levied pursuant to this article shall terminate not later than December 31, 2038. Following the termination of the tax, any county or municipality which has levied a tax pursuant to this article shall not thereafter be again authorized to levy a tax under this article.

(5) No tax shall be imposed under this article on the rental charge associated with the rental or lease of a rental motor vehicle if either:

(A) The customer picks up the rental motor vehicle outside this state and returns it in this state; or

(B) The customer picks up the rental motor vehicle in this state and returns it outside this state.

(6) Nothing in this Code section shall be construed to impair, or authorize or require the impairment of, any existing contract or contractual rights.

(7) Any action by a local governing authority to impose the tax authorized under this Code section shall become effective no sooner than the first day of the month following the month of its adoption by the local governing authority.

(b) No tax under this article may be levied or collected by a county outside the territorial limits of the special district located within the county. (Code 1981, § 48-13-93, enacted by Ga. L. 1996, p. 1639, § 1.)

48-13-94. Reimbursement for persons collecting tax.

Each person collecting the tax authorized by this article shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if the amount due is not delinquent at the time of payment. The rate of deduction shall be 3 percent of the amount due but only if the amount due was not delinquent at the time of payment. (Code 1981, § 48-13-94, enacted by Ga. L. 1996, p. 1639, § 1.)

48-13-95. Local powers and procedures.

The manner of imposition, payment, and collection of the tax and all other procedures related to the tax shall be as provided by each county and municipality electing to exercise the powers conferred by this article. (Code 1981, § 48-13-95, enacted by Ga. L. 1996, p. 1639, § 1.)

48-13-96. Auditor's report.

As a part of the audit report required under Code Section 36-81-7, the auditor shall include, in a separate schedule, a report of the revenues and expenditures pertaining to the tax under this article. (Code 1981, § 48-13-96, enacted by Ga. L. 1996, p. 1639, § 1.)

48-13-97. Cash and credit rental charges to be reported on either cash or accrual basis of accounting.

(a) Any person collecting the tax under this article having both cash and credit rental charges may report the rental charges on either the

cash or accrual basis of accounting. Each election of a basis of accounting shall be made on the first return filed on or after July 1, 1998, and, once made, the election shall be irrevocable unless the commissioner grants written permission for a change. Permission for a change in the basis of accounting shall be granted only upon written application and under rules and regulations promulgated by the commissioner.

(b) Any person reporting on a cash basis of accounting shall include in each return all cash rental charges made during the period covered by the return and all collections made in any period on credit rental charges of prior periods and shall pay the tax on the rental charges at the time of filing the return.

(c) Any person reporting on the accrual basis of accounting shall be allowed a deduction for bad debts under rules and regulations of the commissioner on the same basis that bad debts are allowed as a deduction on state income tax returns. (Code 1981, § 48-13-97, enacted by Ga. L. 1998, p. 598, § 1.)

ARTICLE 6

EXCISE TAX ON SALE OR USE OF ENERGY

Effective date. — This article became effective January 1, 2013.

Editor's notes. — Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not

codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Law reviews. — For article on the 2012 enactment of this article, see 29 Ga. St. U.L. Rev. 112 (2012).

48-13-110. Definitions.

As used in this article, the term:

(1) "Dealer" means any person who sells energy at retail, offers to sell energy at retail, or has in his or her possession any energy for sale at retail.

(2) "Energy" has the same meaning as in Code Section 48-8-3.2.

(3) "Local sales and use tax" means any of the following:

(A) The county special purpose local option sales and use tax under Part 1 of Article 3 of Chapter 8 of this title;

(B) The joint county and municipal sales and use tax under Article 2 of Chapter 8 of this title;

(C) The homestead option sales and use tax under Article 2A of Chapter 8 of this title;

(D) The tax levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment; or

(E) The water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this title.

(4) "Purchaser" means any person who purchases energy and who would have been liable for sales and use tax on such energy but for the exemption provided for in Code Section 48-8-3.2. (Code 1981, § 48-13-110, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386; Ga. L. 2013, p. 787, § 1/HB 250.)

The 2013 amendment, effective May 6, 2013, substituted the present provisions of paragraph (1) for the former pro-

visions, which read: "Dealer' has the same meaning as in Code Section 48-8-2."

48-13-111. Creation of special districts.

Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution, there are created within this state 159 special districts. One such district shall exist within the geographical boundaries of each county, and the territory of each district shall include all of the territory within the county except territory located within the boundaries of any municipality that imposes an excise tax on energy under this article. (Code 1981, § 48-13-111, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386.)

48-13-112. Levy and collection of excise tax on sale or use of energy.

(a)(1) Within the territorial limits of the special district located within the county, each county in this state may levy and collect an excise tax upon the sale or use of energy when such sale or use would have constituted a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of this title but for the exemption in Code Section 48-8-3.2.

(2) The governing authority of each municipality in this state may, subject to the conditions of Code Section 48-13-115, levy and collect

an excise tax upon the sale or use of energy when such sale or use would have constituted a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of this title but for the exemption in Code Section 48-8-3.2.

(3) The excise tax levied pursuant to this article shall be phased in over a four-year period as follows:

(A) For the period commencing January 1, 2013, and concluding at the last moment of December 31, 2013, such excise tax shall be at a rate equivalent to 25 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in Code Section 48-8-3.2;

(B) For the period commencing January 1, 2014, and concluding at the last moment of December 31, 2014, such excise tax shall be at a rate equivalent to 50 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in Code Section 48-8-3.2;

(C) For the period commencing January 1, 2015, and concluding at the last moment of December 31, 2015, such excise tax shall be at a rate equivalent to 75 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in Code Section 48-8-3.2; and

(D) On or after January 1, 2016, such excise tax shall be at a rate equivalent to 100 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in Code Section 48-8-3.2.

(b) Any county or municipality which imposes the excise tax under this article during the phase-in period provided for in this Code section shall levy such excise tax at the amount provided for under the applicable year of the phase in. Any county or municipality which imposes such excise tax on or after January 1, 2016, shall impose it at the rate specified under subparagraph (a)(3)(D) of this Code section.

(c)(1) The excise tax authorized by this article shall be imposed only at the time that sales and use tax on the sale or use of such energy would have been due and payable under Code Section 48-8-30 but for the exemption in Code Section 48-8-3.2. The excise tax shall be due and payable in the same manner as would be otherwise required under Article 1 of Chapter 8 of this title except as otherwise provided under this article. The excise tax shall be a debt of the purchaser of

energy until it is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts. The dealer collecting the excise tax shall remit the excise tax to the governing authority imposing the excise tax. Every dealer required to collect the excise tax levied as provided in this article shall be liable for the excise tax at the applicable rate on the charges for energy actually collected or the amount of excise taxes collected from the purchasers of energy, whichever is greater.

(2) Dealers shall be allowed a percentage of the amount of tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The rate of deduction shall be 3 percent of the amount due of the first \$3,000.00 of the combined total amount of all excise tax computed on a monthly basis and due to each governmental authority imposing the tax and a deduction of one-half of 1 percent of the portion exceeding \$3,000.00 of the combined total amount of all excise tax computed on a monthly basis and due to each governmental authority imposing the tax, but only if the amount due was not delinquent at the time of payment to the local government enacting such excise tax in accordance with Code Section 48-13-119.

(d) A county or municipality levying an excise tax as provided in this subsection shall only levy such excise tax initially by ordinance and at the equivalent rate as determined under paragraph (3) of subsection (a) of this Code section. Following such initial imposition, on or after January 1, 2016, the rate of the tax under this article shall be controlled by the maximum amount of local sales and use tax in effect in the special district, but in no event more than 2 percent; however, this 2 percent limitation shall not apply in a municipality that levies a water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this title, in which case there shall be a 3 percent limitation. In the event the total rate of local sales and use taxes in effect in the special district decreases from 2 percent to 1 percent, the rate of the excise tax under this article shall likewise be reduced at the same time such local sales and use tax rate reduction becomes effective. In the event the total rate of local sales and use taxes in effect in the special district increases from 1 percent to 2 percent, the rate of the excise tax under this article shall likewise be increased at the same time such local sales and use tax rate increase becomes effective.

(e) An excise tax under this article shall not be levied or collected by a county or municipality outside the territorial limits of the special district located within the county.

(f) An excise tax authorized under this article shall not apply to the sale or use of energy used for and in the construction of a competitive

project of regional significance under paragraph (93) of Code Section 48-8-3 during the construction of such project within the time period specified under such paragraph (93). (Code 1981, § 48-13-112, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386; Ga. L. 2013, p. 787, § 2/HB 250.)

The 2013 amendment, effective May 6, 2013, in subsection (c), added the paragraph (c)(1) designation; in paragraph (c)(1), substituted “excise tax authorized” for “excise tax levied pursuant to” in the first sentence, and in the fifth sentence, substituted “dealer required to collect the” for “dealer subject to an” near the beginning, inserted “for energy”, and inserted “of energy” near the end; added paragraph (c)(2); and added subsection (f).

48-13-113. Notice of meeting to determine levy.

Prior to the adoption of the ordinance levying an excise tax authorized under this article, the county governing authority within a special district shall meet and confer with each of the municipalities within the special district. Any county that desires to have an excise tax authorized under this article levied within the special district shall deliver or mail a written notice to the mayor or chief elected official in each municipality located within the special district. If the governing authority of such county does not deliver or mail such notice within 30 days of the date of the written request of the mayor or chief elected official of a municipality within the special district, then such mayor or chief elected official shall deliver or mail a written notice to the mayor or chief elected official in each municipality located within the special district and to the county governing authority. Such notice shall contain the date, time, place, and purpose of a meeting at which the governing authorities of the county and of each municipality are to discuss whether or not the excise tax should be levied within the special district. The notice shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be held at least 30 days prior to the adoption of any ordinance levying an excise tax authorized under this article. (Code 1981, § 48-13-113, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386; Ga. L. 2013, p. 787, § 3/HB 250.)

The 2013 amendment, effective May 6, 2013, inserted “authorized” in the first, second, and last sentences, and substituted “be levied” for “levied be” in the fourth sentence.

48-13-114. Adoption of ordinance levying excise tax within special district.

(a)(1) Following the meeting required under Code Section 48-13-113, the governing authority of the county within the special district shall enter into an intergovernmental agreement with the governing authority of each municipality wishing to participate in such excise tax that provides for the distribution of the proceeds as provided in

subsection (c) of this Code section. Following the execution of such agreement, the governing authority of such county shall be authorized to adopt an ordinance levying the excise tax.

(2) If a municipality elects not to participate in such excise tax by not signing such agreement, then such municipality shall not receive any proceeds from the excise tax. In such event, any proportionate share that would have been distributed to such municipality under an applicable local sales and use tax as provided in subsection (c) of this Code section shall instead be distributed to the general fund of the county.

(b) The excise tax proceeds shall be allocated and distributed by the county governing authority at the end of each calendar month. Of such excise tax proceeds, an amount equal to 1 percent of the proceeds collected by the county shall be paid into the general fund of the county to defray the costs of collection and administration. The remainder of the proceeds shall be distributed in accordance with the intergovernmental agreement as provided in subsection (c) of this Code section.

(c) The excise tax proceeds shall be allocated and distributed by the county governing authority within 30 days following the end of each calendar month in the manner provided in this subsection. Such proceeds shall not be subject to any use or expenditure requirements provided for under any of the local sales and use taxes but shall be authorized to be expended in the same manner as otherwise would have been required under such local sales and use taxes or may be expended for any lawful purpose. Of such excise tax proceeds:

(1) If two such local sales and use taxes are in effect in the special district, an amount equal to one-half of the proceeds of the excise tax shall be distributed to the county general fund and the general fund of each participating municipality located in such county according to the same proportionate share as specified under the distribution provisions of the first local sales and use tax and an amount equal to one-half of the proceeds of the excise tax shall be distributed to the county general fund and the general fund of each participating municipality located in such county according to the same proportionate share as specified under the distribution provisions of the second local sales and use tax; or

(2) If only one such local sales and use tax is in effect in the special district, then the proceeds of the excise tax shall be distributed to the county general fund and the general fund of each participating municipality located in such county according to the same proportionate share as specified under the distribution provisions of the local sales and use tax. (Code 1981, § 48-13-114, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386.)

48-13-115. Nonparticipation of county within special district to enter into intergovernmental agreement.

(a)(1) Within 30 days following the meeting required under Code Section 48-13-113, if the governing authority of the county within the special district fails or refuses to enter into an intergovernmental agreement with the governing authority of each municipality wishing to participate in such excise tax, then the governing authority of each municipality wishing to levy the excise tax shall be authorized to adopt an ordinance levying the excise tax within the corporate limits of such municipality. If a county elects not to participate in such excise tax by not signing such agreement, then the county shall not receive any proceeds from the excise tax. The proceeds of such excise tax shall be deposited in the general fund of each municipality.

(2) If, subsequent to the levy of an excise tax by a municipality under paragraph (1) of this subsection, a county determines to commence proceedings for the imposition of the excise tax authorized under this article, then proceedings for such imposition shall commence in the same manner as otherwise provided under Code Section 48-13-113. Except as to a municipality that levies a water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this title, if a county complies with the requirements of this article and enacts an ordinance imposing the excise tax, the excise tax levied by such municipality shall cease on the day immediately prior to the day the new tax levied by the county commences. If such municipality elects not to participate, its current excise tax authorized under this article shall terminate on the date the county's tax levy becomes effective, and it shall not receive any proceeds under the county levy.

(b)(1) If a municipality located within a special district where the excise tax is imposed by the county is not participating in such excise tax and is not receiving proceeds of that excise tax, the governing authority of that nonparticipating municipality may give written notice to the governing authority of the county and the governing authority of each participating municipality within the special district of its decision to opt in to the existing intergovernmental agreement. Within 60 days of the date of such notice, an amended intergovernmental agreement shall be executed by the governing authority of the municipality exercising such opt in and the governing authorities of the county and each currently participating municipality.

(2) When an amended intergovernmental agreement is executed pursuant to paragraph (1) of this subsection, the revised distribution of proceeds thereunder shall not become effective until the first day of the next succeeding calendar quarter which begins more than 80 days

after the execution date of such amended intergovernmental agreement. The distribution of proceeds of the excise tax shall continue under the prior intergovernmental agreement until the date provided for in this paragraph. (Code 1981, § 48-13-115, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386; Ga. L. 2012, p. 954, § 4/SB 332; Ga. L. 2013, p. 787, § 4/HB 250.)

The 2012 amendments. — The first 2012 amendment, effective January 1, 2013, enacted this Code section. The second 2012 amendment, effective January 1, 2013, rewrote this Code section. See the Code Commission note regarding the effect of these two amendments.

The 2013 amendment, effective May 6, 2012, inserted “authorized” in the first and third sentences of paragraph (a)(2); substituted the present provisions of the first sentence of paragraph (b)(2) for the former provisions, which read: “Notwithstanding the provisions of paragraph (1) of subsection (a) of Code Section 48-13-116, when an amended intergovernmental agreement is executed pursuant to paragraph (1) of this subsection, the revised distribution of proceeds thereunder shall not become effective until the first day of

the first month which is at least 12 months after the execution of such amended intergovernmental agreement.”; and deleted former subsection (c), which read: “Any county that desires to have an excise tax under this article levied county wide within the special district commencing January 1, 2013, shall deliver the written notice pursuant to Code Section 48-13-113 no later than September 1, 2012.”

Code Commission notes. — Pursuant to Code Section 28-9-3, in 2012, the enactment of this Code section by Ga. L. 2012, p. 257, § 5-4/HB 386, was treated as impliedly repealed and superseded by Ga. L. 2012, p. 954, § 4/SB 332, due to irreconcilable conflict. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

48-13-116. Imposition of excise tax; effective date; limitations.

(a)(1) Except as otherwise provided in Code Section 48-13-115, an excise tax authorized by this article shall become effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption date of an ordinance levying the excise tax.

(2) If services are regularly billed on a monthly basis, however, the excise tax shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in paragraph (1) of this subsection.

(b) The excise tax shall cease to be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption date of an ordinance terminating the excise tax.

(c) At no time shall more than a single 2 percent excise tax under this article be imposed within a special district or a municipality, except that in the event a municipality levies a water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this title, a single 3 percent excise tax may be imposed within such municipality.

(d) Following the termination of an excise tax under this article, the governing authority of a county within a special district or the mayor or

chief elected official of a municipality in the special district in which an excise tax authorized by this article is in effect may initiate proceedings for the reimposition of a tax under this article in the same manner as provided in this article for the initial imposition of such tax. (Code 1981, § 48-13-116, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386; Ga. L. 2012, p. 954, § 5/SB 332; Ga. L. 2013, p. 787, § 5/HB 250.)

The 2012 amendments. — The first 2012 amendment, effective January 1, 2013, enacted this Code section. The second 2012 amendment, effective January 1, 2013, rewrote this Code section. See the Code Commission note regarding the effect of these two amendments.

The 2013 amendment, effective May 6, 2013, substituted the present provisions of paragraph (a)(1) for the former provisions, which read: “Except as otherwise provided in Code Section 48-13-115, an excise tax imposed under this article shall become effective on the first day of the next succeeding month following

adoption of the ordinance unless otherwise specified in the intergovernmental agreement required by subsection (a) of Code Section 48-13-114, except that no such tax shall be imposed prior to January 1, 2013.”

Code Commission notes. — Pursuant to Code Section 28-9-3, in 2012, the enactment of this Code section by Ga. L. 2012, p. 257, § 5-4/HB 386, was treated as impliedly repealed and superseded by Ga. L. 2012, p. 954, § 5/SB 332, due to irreconcilable conflict. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

48-13-117. Procedures for manner of payment and collection; assessment; claim for refund of taxes paid; contingent contract or arrangement for assessment of tax liability prohibited.

(a) Except as otherwise provided in this Code section, the manner of payment and collection of the excise tax and all other procedures related to the tax, including, but not limited to, periodic auditing of dealers collecting and remitting the excise tax authorized under this article, shall be as provided by each county and municipality electing to exercise the powers conferred by this article.

(b)(1) The amount of the excise tax authorized by this article shall be assessed upon either the dealer or the purchaser within three years after the time that sales and use tax on the sale or use of such energy would have been due and payable under Code Section 48-8-30 but for the exemption in Code Section 48-8-3.2, except as otherwise provided in this Code section.

(2) In the case of a dealer or purchaser who knowingly and willfully evades all or any portion of the excise tax imposed by this article, the amount of such excise tax evaded may be assessed at any time upon such dealer or such purchaser, as the case may be.

(c) No action without assessment shall be brought against either the dealer or the purchaser for the collection of any excise tax authorized by this article after the expiration of the period for assessment.

(d)(1) A claim for refund of the excise tax levied pursuant to this article erroneously or illegally assessed and collected may be made by the dealer or the purchaser at any time within three years after the date of the payment of the excise tax to the governing authority. In making any such claim for refund, the procedures provided in Code Section 48-5-380 shall apply.

(2) If a claim for refund of taxes paid for any taxable period is filed within the last six months of the period during which the county or municipality imposing the tax may assess the amount of taxes, the assessment period is extended for a period of six months beginning on the day the claim for refund is filed.

(e) Where, before the expiration of the time prescribed in this Code section for the assessment of the excise tax authorized by this article, both an authorized representative of the governing authority and the dealer or purchaser have consented in writing to its assessment after such time, the excise tax may be assessed at any time prior to the expiration of the agreed upon period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period. The governing authority is authorized in any such agreement to extend similarly the period within which a claim for refund may be filed.

(f) In determining the liability of any dealer or purchaser for the excise tax, the governing authority imposing such tax may not employ or otherwise hire an agent who is compensated in whole or in part by such governing authority for services rendered on a contingent basis or any other basis related to the amount of tax, interest, or penalty assessed against or collected from the dealer or purchaser. Any such contract or arrangement, if made or entered into, is void and unenforceable. (Code 1981, § 48-13-117, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386; Ga. L. 2013, p. 787, § 6/HB 250.)

The 2013 amendment, effective May 6, 2013, substituted the present provisions of this Code section for the former provisions, which read: "The manner of payment and collection of the excise tax and all other procedures related to the

tax, including, but not limited to, periodic auditing of dealers collecting and remitting the excise tax under this article, shall be as provided by each county and municipality electing to exercise the powers conferred by this article."

48-13-118. Separate revenue schedule required.

As a part of the audit report required under Code Section 36-81-7, the auditor shall include, in a separate schedule, a report of the revenues pertaining to the excise tax under this article. (Code 1981, § 48-13-118, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386.)

48-13-119. Transmittal of returns and remission of taxes due; form of returns; estimated tax liability.

(a) Each dealer, on or before the twentieth day of each month, shall transmit returns and remit taxes due to any applicable governing authority imposing a tax authorized under this article showing the gross charges for energy taxable under the ordinance enacted pursuant to this article during the preceding calendar month. The governing authority imposing the tax may provide by resolution or ordinance for quarterly or annual returns. The returns required by this subsection shall be made upon forms prescribed, prepared, and furnished by the governing authority imposing the tax.

(b) As used in this subsection, the term “estimated tax liability” means a dealer’s tax liability under the ordinance enacted pursuant to this article, adjusted to account for any subsequent change in the rate of tax authorized to be imposed under this article. If the estimated tax liability of a dealer for any taxable period exceeds \$2,500.00, the dealer shall file a return and remit to the governing authority imposing the tax not less than 50 percent of the estimated tax liability for the taxable period on or before the twentieth day of the period. The amount of the payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section. This subsection shall not apply to any dealer unless during the previous fiscal year the dealer’s monthly payments exceeded \$2,500.00 per month for three consecutive months or more. (Code 1981, § 48-13-119, enacted by Ga. L. 2013, p. 787, § 7/HB 250.)

Effective date. — This Code section became effective May 6, 2013.

48-13-120. Extension of time for making returns; penalties and interest; failure to make return.

(a)(1) The governing authority imposing a tax authorized under this article may, for good cause, extend the time for making any returns required under this article for not more than 30 days.

(2) No extension granted pursuant to paragraph (1) of this subsection shall be valid unless granted in writing upon written application, and then the extension shall only be valid for a period, as appropriate, of not more than 12 consecutive months or four consecutive calendar quarters.

(3) Upon the granting of any extension authorized by this subsection, the dealer shall remit to the governing authority imposing a tax authorized under this article on or before the date the tax would otherwise become due without the extension an amount which equals

not less than 100 percent of the dealer's payment for the corresponding period of the preceding tax year.

(4) No interest or penalty shall be charged by reason of the granting of an extension pursuant to this subsection during the first ten days of each extension period. Thereafter, interest shall be collected upon the unpaid balance of the dealer's liability at the rate specified in Code Section 48-2-40.

(b) In the event any dealer fails to make a return and pay the tax as provided by this article or makes a grossly incorrect return or a return that is false or fraudulent, the governing authority imposing a tax authorized under this article shall make an estimate for the taxable period of taxable charges of the dealer. Based upon its estimate, the governing authority shall assess and collect the taxes, interest, and penalties, as accrued, on the basis of the assessments against the dealer and such assessment may be assessed against the dealer at any time. (Code 1981, § 48-13-120, enacted by Ga. L. 2013, p. 787, § 7/HB 250.)

Effective date. — This Code section became effective May 6, 2013.

48-13-121. Keeping and preservation of records, exemption certificates, and books of account; records to be open to examination; audits and examinations.

(a) Each dealer required to make a return and collect and remit any tax authorized under this article shall keep and preserve:

(1) Suitable records of the energy charges taxable under this article;

(2) Any exemption certificates received by the dealer; and

(3) Other books of account which are necessary to determine the amount of tax due.

(b) All books, invoices, exemption certificates, and other records required by this Code section to be kept shall be open to examination at all reasonable hours by the governing authority imposing a tax authorized under this article.

(c) Any audit or examination by a governing authority imposing a tax authorized under this article of the books and records of a dealer for the purpose of ascertaining the proper amount of tax due shall be based primarily upon any sales tax audit report of the dealer, any other tax audit report of the dealer, or any return created pursuant to Code Section 48-13-119 within the time periods described in subsection (b) of Code Section 48-13-117 or of subsection (b) of Code Section 48-13-120. Any information secured by the local governing authority incident to

any such audit or examination shall be confidential and privileged to the same extent as provided in Code Section 48-2-15 for tax information secured by the commissioner. (Code 1981, § 48-13-121, enacted by Ga. L. 2013, p. 787, § 7/HB 250.)

Effective date. — This Code section became effective May 6, 2013.

48-13-122. Authority to waive penalties.

The provisions of Code Section 48-2-41, relating to authority to waive interest on unpaid taxes, and Code Section 48-2-43, relating to authority to waive penalties, shall apply to taxes imposed by any local governing authority pursuant to this article, provided that the local governing authority shall stand in lieu of the commissioner, and the county or municipality shall stand in lieu of the state for purposes of this Code section. (Code 1981, § 48-13-122, enacted by Ga. L. 2013, p. 787, § 7/HB 250.)

Effective date. — This Code section became effective May 6, 2013.

48-13-123. Failure to make returns or pay full amount of tax; penalties and interest.

(a) When any dealer fails to make any return or to pay the full amount of the tax required by an ordinance authorized by this article, there shall be imposed, in addition to other penalties provided by law, a penalty to be added to the tax in the amount of 5 percent or \$5.00, whichever is greater, if the failure is for not more than 30 days and an additional 5 percent or \$5.00, whichever is greater, for each additional 30 days or fraction of 30 days during which the failure continues. The penalty for any single violation shall not exceed 25 percent or \$25.00 in the aggregate, whichever is greater. If the failure is due to providential cause shown to the satisfaction of the governing authority imposing a tax authorized under this article in affidavit form attached to the return and remittance is made within ten days of due date, the return may be accepted exclusive of penalties and interest. In the case of a false or fraudulent return or of a failure to file a return where willful intent exists to defraud the governing authority of any tax due under an ordinance authorized by this article, a penalty of 50 percent of the tax due shall be assessed.

(b) All civil penalties and interest added to any tax imposed under an ordinance authorized by this article and collected by a county or municipality shall be included as revenue derived from such tax for purposes of the expenditure requirements imposed on such county or

municipality as provided by this article. (Code 1981, § 48-13-123, enacted by Ga. L. 2013, p. 787, § 7/HB 250.)

Effective date. — This Code section became effective May 6, 2013.

48-13-124. Willful failure to collect tax; misdemeanor; punishment.

(a) It shall be unlawful for any dealer to knowingly and willfully fail, neglect, or refuse to collect the tax provided in this article, either by himself or herself or through his or her agents or employees.

(b) In addition to the penalty of being liable for and paying the tax himself or herself, any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than \$10,000.00 or imprisonment for not more than five years, or both. (Code 1981, § 48-13-124, enacted by Ga. L. 2013, p. 787, § 7/HB 250.)

Effective date. — This Code section became effective May 6, 2013.

48-13-125. False or fraudulent return; penalty.

(a) It shall be unlawful for any dealer required by this article to knowingly and willfully make, render, sign, or verify any return to make a false or fraudulent return with intent to evade the tax levied by this article.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than \$10,000.00 or imprisonment for not more than five years, or both. (Code 1981, § 48-13-125, enacted by Ga. L. 2013, p. 787, § 7/HB 250.)

Effective date. — This Code section became effective May 6, 2013.

48-13-126. Failure or refusal to furnish return; punishment.

(a) It shall be unlawful for any dealer subject to this article to knowingly and willfully fail or refuse to furnish any return required to be made by this article or to fail or refuse to furnish a supplemental return or other data required by the governing authority of the county or municipality pursuant to any provision of this article.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than \$10,000.00 or imprisonment for not more than five years, or both. (Code 1981, § 48-13-126, enacted by Ga. L. 2013, p. 787, § 7/HB 250.)

Effective date. — This Code section became effective May 6, 2013.

48-13-127. Willful failure to keep records or open records to inspection; punishment.

(a) It shall be unlawful for any dealer subject to this article to knowingly and willfully fail to keep records or to fail to open the records to inspection as required by law.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than \$10,000.00 or imprisonment for not more than five years, or both. (Code 1981, § 48-13-127, enacted by Ga. L. 2013, p. 787, § 7/HB 250.)

Effective date. — This Code section became effective May 6, 2013.

48-13-128. Violation of article; punishment.

(a) It shall be unlawful for any dealer to violate any other provision of this article for which punishment is not otherwise provided.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 48-13-128, enacted by Ga. L. 2013, p. 787, § 7/HB 250.)

Effective date. — This Code section became effective May 6, 2013.

CHAPTER 14

GRANTS AND SPECIAL REVENUE DISBURSEMENTS

Sec. 48-14-1.	Grants to counties containing more than 20,000 acres of state-owned land not subject to taxation; limit on amount of grants; evaluation and assessment; procedure for billing State Forestry Commission.	Sec. 48-14-3.	Distribution of funds appropriated to counties for public road construction and maintenance; submission of annual county audits; unexpended funds; payment; minimum annual amount.
48-14-2.	"TVA" defined; apportionment of payments to state and political subdivisions by TVA in lieu of taxes; formula; deduction of direct TVA payments; reapportionment.	48-14-4.	Annual grant to counties with 20,000 or more acres of unimproved real estate owned by Department of Natural Resources.

48-14-1. Grants to counties containing more than 20,000 acres of state-owned land not subject to taxation; limit on amount of grants; evaluation and assessment; procedure for billing State Forestry Commission.

(a) Each county in which is located land belonging to the state which consists of 20,000 acres and from which the county receives no tax revenue may receive from the State Forestry Commission a grant of funds for such land. The amount of funds to be granted may not exceed the amount the county would have received were the land subject to taxation during the applicable time period based on property evaluation and millage assessment.

(b) Immediately upon an evaluation of the property involved and a determination of the millage assessment for the property, the county tax official for the county involved shall bill the State Forestry Commission for the proper amount as determined under this Code section. The county tax official shall send the bill to the State Forestry Commission at the same time as the county tax bills are sent to the property owners of the county who are subject to county taxation. (Ga. L. 1963, p. 166, §§ 1, 2; Code 1933, § 91A-7001, enacted by Ga. L. 1978, p. 309, § 2.)

48-14-2. "TVA" defined; apportionment of payments to state and political subdivisions by TVA in lieu of taxes; formula; deduction of direct TVA payments; reapportionment.

(a) As used in this Code section, the term "TVA" means the Tennessee Valley Authority.

(b) Payments made by the TVA to the state and any of its political subdivisions under 16 U.S.C.A. Section 831(l), as amended, shall be apportioned among the political subdivisions in which property owned by the TVA is located on the basis of the percentage of loss of taxes to each to be determined as provided in this Code section. The payments made for each fiscal year by the TVA shall be distributed by the commissioner among counties and municipalities in which the TVA had power property including, but not limited to, reservoir land allocated to power purposes, at the end of the preceding fiscal year, in such manner that the sum of such payments plus the total amount of payments for the same fiscal year made by the TVA directly to counties of the state shall be apportioned among the counties and municipalities in the same ratio that the book value of the TVA's power property in each county and in each municipality, respectively, bore as of the end of the preceding fiscal year to the total amount of the book value of the TVA's power properties in all counties within the state, plus the book value of the TVA's power properties located in all municipalities within the state. The apportionment shall be subject to any adjustments necessary to meet the conditions set forth in subsections (c) and (d) of this Code section. The amount distributed by the commissioner under this Code section to any county or municipality in which is located an independent school district shall be divided between the county or municipal government and the county or municipal school system based upon the ratio that the tax rate for the previous tax year for each bears to the total rate for both for the previous tax year.

(c) All payments in lieu of taxes made by the TVA directly to any county for any fiscal year shall be retained by the county. The direct payment shall be deducted from the amount finally apportioned to the county under subsection (b) of this Code section before distribution of the balance, if any, of the county's payment share for the particular fiscal year from the state.

(d) If the initially apportioned payment share of any county for a fiscal year is less than the amount of payment made directly to the county by the TVA under 16 U.S.C.A. Section 831(l), the amount due the county shall be increased to conform to the requirements of 16 U.S.C.A. Section 831(l), and the previously apportioned shares of all other counties and municipalities shall be reduced pro rata so that the total of the reductions shall equal the total of increases necessary to meet the minimum payment requirements of this Code section. (Ga. L. 1972, p. 923, §§ 1-3; Code 1933, § 91A-7002, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48.)

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 230 et seq.

48-14-3. Distribution of funds appropriated to counties for public road construction and maintenance; submission of annual county audits; unexpended funds; payment; minimum annual amount.

(a) The funds made available by appropriations of the General Assembly for distribution to the counties to be used exclusively for the construction and maintenance of the public roads shall be distributed by the Office of the State Treasurer before the tenth day of each month to each county fiscal officer. The amounts distributable each month shall be one-twelfth of the amounts provided for each county in the following table:

<u>County</u>	<u>Amount</u>
Appling	\$ 38,074.69
Atkinson	27,609.69
Bacon*	*21,562.95
Baker	22,251.20
Baldwin	18,840.71
Banks*	*20,573.60
Barrow	24,217.62
Bartow*	*36,861.04
Ben Hill	25,016.48
Berrien	39,448.11
Bibb	23,108.44
Bleckley*	*17,998.86
Brantley	28,135.09
Brooks*	*38,865.35
Bryan	28,423.90
Bulloch*	*64,465.57
Burke*	*75,000.00
Butts	18,462.78
Calhoun	21,406.25
Camden	26,030.40
Candler*	*24,844.41
Carroll	50,097.45
Catoosa	16,941.89
Charlton	32,113.99
Chatham	27,001.32

Chattahoochee	11,783.12
Chattooga*	*22,453.99
Cherokee*	*40,216.23
Clarke	13,500.66
Clay	13,973.83
Clayton	19,101.87
Clinch	44,766.64
Cobb*	*35,917.78
Coffee	39,841.39
Colquitt*	*43,774.21
Columbia*	*24,709.22
Cook*	*18,720.87
Coweta*	*37,690.62
Crawford	24,574.03
Crisp*	*33,241.61
Dade	18,690.15
Dawson	27,833.97
Decatur*	*43,918.62
DeKalb*	*44,573.07
Dodge	42,198.01
Dooly*	*42,342.42
Dougherty	23,102.29
Douglas*	*21,612.13
Early	31,656.19
Echols	26,310.00
Effingham*	*51,077.60
Elbert*	*33,014.24
Emanuel*	*60,964.97
Evans	18,094.08
Fannin*	*19,885.36
Fayette	23,805.90
Floyd*	*34,243.25
Forsyth*	*23,615.40
Franklin	30,900.35
Fulton*	*75,000.00
Gilmer*	*27,572.82
Glascok	13,257.93
Glynn	24,798.32
Gordon*	*26,509.72
Grady	45,755.99
Greene*	*29,895.63
Gwinnett*	*46,250.67
Habersham	28,125.86

Hall	37,592.30
Hancock*	*31,047.83
Haralson*	*29,520.79
Harris	37,254.32
Hart*	*28,669.70
Heard*	*26,617.25
Henry*	*32,246.12
Houston	26,949.09
Irwin*	*22,583.03
Jackson	29,102.93
Jasper	37,595.37
Jeff Davis*	*25,071.77
Jefferson*	*57,867.87
Jenkins*	*22,524.65
Johnson	23,197.54
Jones	27,327.01
Lamar*	*17,190.76
Lanier	31,063.20
Laurens*	*64,652.00
Lee*	*26,869.20
Liberty	36,990.10
Lincoln	21,609.04
Long	19,292.36
Lowndes	46,859.02
Lumpkin	22,868.78
McDuffie*	*23,947.23
McIntosh	17,857.49
Macon	48,727.38
Madison*	*29,914.07
Marion*	*23,332.74
Meriwether	43,393.22
Miller*	*17,267.58
Mitchell	48,825.44
Monroe	39,758.43
Montgomery*	*23,179.10
Morgan*	*30,387.24
Murray*	*20,075.85
Muscogee	27,078.13
Newton	35,290.98
Oconee	17,820.62
Oglethorpe*	*28,556.04
Paulding*	*32,301.42
Peach	15,049.21

Pickens	28,205.75
Pierce	23,108.43
Pike*	*18,398.25
Polk	22,318.80
Pulaski	19,621.12
Putnam*	*26,248.55
Quitman	10,741.53
Rabun	20,321.66
Randolph*	*21,738.09
Richmond*	*38,043.96
Rockdale	18,213.91
Schley	16,932.66
Screven*	*60,547.13
Seminole*	*19,393.75
Spalding*	*21,950.09
Stephens*	*20,109.65
Stewart	20,051.27
Sumter*	*38,590.89
Talbot	31,284.41
Taliaferro	15,122.95
Tattnall*	*37,315.77
Taylor	32,104.78
Telfair	45,104.61
Terrell	22,899.50
Thomas	54,850.65
Tift*	*25,382.10
Toombs*	*34,163.37
Towns	16,170.68
Treutlen	23,154.52
Troup	32,952.79
Turner*	*24,466.49
Twiggs*	*28,918.57
Union	19,396.83
Upson*	*22,893.36
Walker	35,764.15
Walton*	*30,774.37
Ware	42,609.73
Warren	28,371.66
Washington*	*60,362.76
Wayne*	*32,949.72
Webster	15,325.74
Wheeler	26,162.52
White	17,537.95

Whitfield*	*23,028.55
Wilcox	32,157.02
Wilkes*	*25,809.18
Wilkinson*	*27,443.76
Worth*	*42,265.60
TOTAL	\$4,810,846.70

*Counties with this symbol have increased amounts to figures shown in order to bring them to the average of 14.13 percent.

(b)(1) The governing authority of each county shall submit to the state auditor a copy of its regular annual audit not later than 180 days after the end of the fiscal year for which the audit was made. If an extension of time is granted to a county for the filing of the audit required by Code Section 36-81-7 or the correction of deficiencies in such an audit, then the same extension of time shall apply for purposes of this paragraph. The state auditor shall compare the amount of funds distributed to each county in the year of the audit against the amount of funds expended by the county in that year for the purposes authorized by this Code section. In the event the state auditor determines that the amount so expended in any year is less than the amount distributed, he shall certify the amount of the difference to the Office of the State Treasurer, which shall deduct and withhold the certified amount from the next funds to be distributed to the underexpending county under this Code section. In the event a county expending less than the amount distributed to it certifies at the time of the submission of its audit or within a reasonable time thereafter that it is accumulating the unexpended funds for a specified allowable purpose and submits proof of the deposit or investment of the funds, the county shall be deemed to have complied with this subsection, except that the amount of the unexpended funds shall be added to the amount of funds distributed to the county in the next succeeding year or years for the purpose of making the comparison and determination provided in this Code section. Upon the request of the Governor or the commissioner of transportation, the state auditor may audit the books and records of each county to verify the accuracy of the audits filed with him and to ensure that the expenditure of the funds has been made for the purposes intended.

(2) The procedure provided in this subsection shall apply to any grants to counties under any provision of law from motor fuel tax funds.

(3) The Secretary of State shall mail a copy of this subsection to the chairman and the clerk of the governing authority of each county.

(c) The Office of the State Treasurer shall pay to each county the amount provided in this Code section in 12 equal monthly installments.

The amount necessary to make each monthly payment to the proper officials of the various counties is appropriated for the purpose and made a special and continuing appropriation.

(d) If the Office of Planning and Budget fails to make available for any quarter of a fiscal year a sum sufficient to pay in full the appropriation provided in subsection (c) of this Code section, the distribution of funds to the counties for that quarter shall be on the basis existing prior to January 1, 1979. No county shall receive less than \$17,500.00. (Ga. L. 1923, p. 41, § 2; Ga. L. 1925, p. 66, § 1; Code 1933, § 92-1410; Code 1933, § 92-1404, enacted by Ga. L. 1937, p. 167, § 1; Ga. L. 1937-38, Ex. Sess., p. 258, § 1; Ga. L. 1945, p. 316, § 1; Ga. L. 1949, Ex. Sess., p. 19, § 3; Ga. L. 1966, p. 203, § 1; Ga. L. 1969, p. 845, § 1; Code 1933, § 92-1404, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-7003, enacted by Ga. L. 1979, p. 5, § 110; Ga. L. 1982, p. 3, § 48; Ga. L. 1984, p. 818, § 7; Ga. L. 1985, p. 149, § 48; Ga. L. 1992, p. 6, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.)

Cross references. — For further provisions regarding grants by state to coun-

ties for public road purposes, see § 36-17-20 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Restriction on use of funds generally. — Funds received by counties under this section must be used for purposes which have as their sole and only function the construction and maintenance of public roads. 1967 Op. Att'y Gen. No. 67-116.

Funds are limited to the direct cost involved in the construction or maintenance of public roads. To be a legitimate and legal expenditure, the item must be traceable directly to such construction and maintenance, and must be an item that is customarily associated with the construction and maintenance of roads. 1965-66 Op. Att'y Gen. No. 66-116.

Administrative expenses chargeable against these funds. — Only administrative expense that can be charged against these funds are items customarily and usually associated with the construction and maintenance of roads and have as their sole or exclusive function the construction and maintenance of public roads. 1965-66 Op. Att'y Gen. No. 66-188.

Purchase of construction and maintenance equipment under this section is proper, provided the primary function of such equipment is for construc-

tion and maintenance of roads. For example, these funds may not be expended for the purchase of a tractor since it would appear that the primary purpose of a tractor would not be for road maintenance or construction, but this rationale would not apply to bulldozers and motor graders. 1967 Op. Att'y Gen. No. 67-116.

Illegal to use funds for county farm even though farm houses prisoners who perform road construction. — County may not use the state grant funds for the upkeep and operation of a county farm although prisoners are kept there who are used as laborers on road construction and maintenance. 1967 Op. Att'y Gen. No. 67-116.

Presumption that counties have annual audits made. — State treasurer (now director of the Office of Treasury and Fiscal Services) is justified in relying upon the legal presumption that public officers are performing the duties imposed upon the officers by law, and unless the treasurer is informed or becomes aware of facts to the contrary, the treasurer can legitimately assume that each county is having a regular annual audit made inas-

much as such an obligation is imposed by law on each and every county of this state and the treasurer is justified in continuing

to make distributions to the respective counties until notified otherwise. 1965-66 Op. Att'y Gen. No. 66-116.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 230 et seq.

48-14-4. Annual grant to counties with 20,000 or more acres of unimproved real estate owned by Department of Natural Resources.

(a) As used in this Code section, the term “department” means the Department of Natural Resources.

(b) Each county in which is located 20,000 acres or more of unimproved real property belonging to the state and under the custody or control of the department, in which such state owned property exceeds 10 percent of the taxable real property in the county, and in which such property represents 10 percent or more of the assessed tax digest of the county may receive from the department an annual grant as provided in this Code section.

(c) For each county eligible to receive a grant pursuant to subsection (b) of this Code section, the department shall calculate the approximate value of public services which the county provides the department each year; provided, however, that such sum shall not exceed the amount the county would charge any other landowner for such services. The department shall request funds in its annual operating budget each year to reimburse all eligible counties for the provision of such services. In the event the amount appropriated in any year is less than the amount requested, each eligible county shall receive a pro rata share based on the estimated value of services provided.

(d) The department is directed to make an annual calculation of the amount of unimproved state owned real property under its custody or control and determine which counties are eligible for a grant pursuant to subsection (b) of this Code section. The first such determination shall be completed not later than December 31, 1993, and each subsequent determination shall be made not later than December 31 of each year. The department is further directed to calculate the approximate value of public services provided by each eligible county as provided in subsection (c) of this Code section.

(e) No county shall be authorized to receive a grant of funds pursuant to both this Code section and Code Section 48-14-1. (Code 1981, § 48-14-4, enacted by Ga. L. 1993, p. 1071, § 1.)

CHAPTER 15

EXCISE TAX ON MARIJUANA AND CONTROLLED SUBSTANCES

Sec.		Sec.	
48-15-1.	No immunity from criminal prosecution; unlawful use of marijuana or controlled substances not authorized.	48-15-8.	Enforcement and administration of chapter.
48-15-2.	Definitions.	48-15-9.	Assessment and collection of tax.
48-15-3.	Imposition of tax.	48-15-10.	Confidentiality of information obtained under chapter; penalty for violation; publication of statistics authorized.
48-15-4.	Exemption.	48-15-11.	Forfeiture law not superseded by chapter.
48-15-5.	Calculation of tax.		
48-15-6.	Tax rates.		
48-15-7.	Time of payment of tax; report forms.		

48-15-1. No immunity from criminal prosecution; unlawful use of marijuana or controlled substances not authorized.

No provision of this chapter shall in any manner provide any immunity for any person from criminal prosecution pursuant to the laws of this state and no provision of this chapter shall in any manner be deemed to authorize the unlawful use, possession, consumption, storage, transfer, or distribution of marijuana or controlled substances. (Code 1981, § 48-15-1, enacted by Ga. L. 1990, p. 1231, § 1.)

48-15-2. Definitions.

As used in this chapter, the term:

- (1) "Commissioner" means the state revenue commissioner.
- (2) "Controlled substance" shall have the same meaning as defined in paragraph (4) of Code Section 16-13-21 and shall mean any drug, substance, or immediate precursor, whether real or counterfeit, that is held, possessed, transported, transferred, sold, or offered for sale in violation of the laws of this state.
- (3) "Marijuana" shall have the same meaning as defined in paragraph (16) of Code Section 16-13-21 and shall mean any marijuana, whether real or counterfeit, that is held, possessed, transported, transferred, sold, or offered for sale in violation of the laws of this state. (Code 1981, § 48-15-2, enacted by Ga. L. 1990, p. 1231, § 1.)

48-15-3. Imposition of tax.

(a) There is imposed, in addition to all other applicable taxes, a state excise tax upon each use, possession, consumption, storage, or transfer of marijuana or any controlled substance.

(b) The tax imposed by this Code section shall apply regardless of whether the substance exists in solid, liquid, or gaseous form and regardless of the degree of purity of the substance. Each person who uses, possesses, consumes, stores, or transfers a substance identified in this Code section shall be liable for the tax imposed by this Code section. (Code 1981, § 48-15-3, enacted by Ga. L. 1990, p. 1231, § 1.)

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state laws imposing tax or license fee on possession, sale, or the like, of illegal narcotics, 12 ALR5th 89.

48-15-4. Exemption.

Nothing in this chapter shall require persons who are lawfully in possession of marijuana or a controlled substance under a valid medical prescription or a licensed pharmacist or medical practitioner licensed to dispense marijuana or any controlled substance to pay the tax required under this chapter when such person, pharmacist, or practitioner is lawfully using, possessing, consuming, storing, or transferring such marijuana or controlled substance. (Code 1981, § 48-15-4, enacted by Ga. L. 1990, p. 1231, § 1.)

48-15-5. Calculation of tax.

For the purpose of calculating the tax under Code Section 48-15-6, a quantity of marijuana or other controlled substance in the person's possession shall be measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers. (Code 1981, § 48-15-5, enacted by Ga. L. 1990, p. 1231, § 1.)

48-15-6. Tax rates.

A tax is imposed on marijuana and controlled substances as defined in Code Section 48-15-2 at the following rates:

- (1) On each gram of marijuana, or each portion of a gram, \$3.50;
- (2) On each gram of controlled substance, or portion of a gram, \$200.00; and
- (3) On each ten dosage units of a controlled substance that is not sold by weight, or portion thereof, \$400.00. (Code 1981, § 48-15-6, enacted by Ga. L. 1990, p. 1231, § 1.)

48-15-7. Time of payment of tax; report forms.

The tax imposed by Code Section 48-15-3 shall be due and payable at the time of each use, possession, consumption, storage, or transfer; however, each person liable to pay the tax may report and remit the amount of tax which is due, using report forms prepared by the commissioner, no later than the twentieth day of the calendar month following the month in which the tax liability is incurred. The reporting procedure provided for in this Code section shall not prevent the commissioner from earlier assessing or collecting, prior to receiving the report or remittance, any taxes which have become due. (Code 1981, § 48-15-7, enacted by Ga. L. 1990, p. 1231, § 1.)

48-15-8. Enforcement and administration of chapter.

This chapter shall be enforced and administered by the commissioner, and the commissioner is authorized to adopt all forms and all reasonable rules and regulations which the commissioner deems necessary to enforce and administer this chapter. (Code 1981, § 48-15-8, enacted by Ga. L. 1990, p. 1231, § 1.)

48-15-9. Assessment and collection of tax.

The commissioner is authorized to issue assessments, including jeopardy assessments, to issue tax executions, and to collect the tax imposed under this chapter in the same manner and to the same extent as provided in this title for any other state tax assessed and collected by the commissioner. (Code 1981, § 48-15-9, enacted by Ga. L. 1990, p. 1231, § 1.)

48-15-10. Confidentiality of information obtained under chapter; penalty for violation; publication of statistics authorized.

(a) Notwithstanding any law to the contrary, neither the commissioner nor a public employee may reveal facts contained in a report or return required by this chapter or any information obtained from a person under this chapter; nor can any information contained in such a report or return or obtained from such person be used against the person in any criminal proceeding, unless independently obtained, except in connection with a proceeding involving taxes due under this chapter from the person making the return.

(b) Any person violating this Code section shall be guilty of a misdemeanor of a high and aggravated nature.

(c) This Code section shall not prohibit the commissioner from publishing statistics that do not disclose the identity of such persons or

the contents of particular returns or reports. (Code 1981, § 48-15-10, enacted by Ga. L. 1990, p. 1231, § 1.)

48-15-11. Forfeiture law not superseded by chapter.

Notwithstanding any provision of this chapter to the contrary, no provision of this chapter shall be deemed to supersede the provisions of Code Section 16-13-49 with respect to forfeitures and the vesting of forfeited property, money, or currency. (Code 1981, § 48-15-11, enacted by Ga. L. 1990, p. 1231, § 1; Ga. L. 1991, p. 94, § 48.)

CHAPTER 16

TAX AMNESTY PROGRAM

Sec.		Sec.	
48-16-1.	Legislative findings, declarations, and intent.	48-16-7.	Interest on installment agreements; interest on refunded or credited overpayments.
48-16-2.	Short title.	48-16-8.	Regulations, forms and instructions, and other actions necessary to implement chapter; publicity of program.
48-16-3.	Definitions.	48-16-9.	Accounting and reporting of funds collected under amnesty program; disposition of funds.
48-16-4.	Tax amnesty program; waiver of penalties; duration and applicability of program; forms.	48-16-10.	Imposition of cost of collection fee after amnesty period expires.
48-16-5.	Applicability; effect of audit, assessment, bill, notice, demand for payment, or proceeding; installment agreements; deficiency assessment after amnesty period ends.	48-16-11.	Contracts with debt collection agencies or attorneys to collect delinquent taxes, penalties, and interest.
48-16-6.	To whom amnesty granted; effect of notice of criminal investigation or pending criminal litigation; interest or penalty paid prior to request for amnesty; refund or credit of taxes or interest paid under program.	48-16-12.	Willful failure to make return; false returns; willful failure to pay taxes; failure to obey a subpoena or order.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, Chapter 16 of Title 48, as enacted by Ga. L. 1992, p. 1521, § 3, was redesignated as Chapter 17 of Title 48, since Ga. L. 1992, p. 1249, § 1, also enacted a Chapter 16 of Title 48.

48-16-1. Legislative findings, declarations, and intent.

The General Assembly finds and declares that a public purpose is served by the waiver of tax penalties and criminal prosecution in return for the immediate reporting and payment of previously underreported, unreported, or unpaid tax liabilities. The General Assembly further finds and declares that the benefits gained through this program include, among other things, increased collection of certain currently owed taxes, permanently bringing into the tax system taxpayers who have been evading payment of taxes and providing an opportunity for taxpayers to satisfy tax obligations before stepped-up tax enforcement programs take effect. It is the intention of the General Assembly in enacting this chapter that the tax amnesty program provided under this chapter be a one-time occurrence which shall not be repeated in the future because taxpayers' expectations of any future amnesty programs could have a counterproductive effect on compliance under this chapter. (Code 1981, § 48-16-1, enacted by Ga. L. 1992, p. 1249, § 1; Ga. L. 1993, p. 91, § 48.)

48-16-2. Short title.

This chapter shall be known and may be cited as the "Tax Amnesty Program Act." (Code 1981, § 48-16-2, enacted by Ga. L. 1992, p. 1249, § 1.)

48-16-3. Definitions.

As used in this chapter, the term:

(1) "Accounts receivable" means an amount of state tax, penalty, or interest which has been recorded as due and entered in the account records or any ledger maintained in the department, or which a taxpayer should reasonably expect to become due as a direct or indirect result of any pending or completed audit or investigation, which a taxpayer knows is being conducted by any federal, state, or local taxing authority.

(2) "Final, due, and owing" means an assessment which has become final and is owed to the state due to either the expiration of the taxpayer's appeal rights or, in the case of an assessment which has been appealed, either pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," or pursuant to Code Section 48-2-59, the rendition of the final order by the commissioner or by any court of this state. Assessments that have been appealed shall be final, due, and owing 15 days after the last unappealed or unappealable order sustaining the assessment or any part thereof has become final. Assessments that have not been appealed shall be final, due, and owing 30 days after service of notice of assessment pursuant to Code Section 48-2-45.

(3) "Taxpayer" means any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary, or any other entity of any kind subject to any tax set forth in this title or any person required to collect any such tax under this title. (Code 1981, § 48-16-3, enacted by Ga. L. 1992, p. 1249, § 1.)

48-16-4. Tax amnesty program; waiver of penalties; duration and applicability of program; forms.

(a) The commissioner shall develop and administer a one-time tax amnesty program as provided in this chapter. The commissioner shall, upon the voluntary return and remission of taxes and interest owed by any taxpayer, waive all penalties that are assessed or subject to being assessed for outstanding liabilities for taxable periods ending or transactions occurring on or before December 31, 1990. The commissioner

shall provide by regulation as necessary for the administration of this amnesty program and shall further provide for necessary forms for the filing of amnesty applications and returns.

(b) Notwithstanding the provisions of any other law to the contrary, the tax amnesty program shall begin by October 31, 1992, and shall be completed no later than December 31, 1992, and shall apply to all taxpayers owing taxes, penalties, or interest administered by the commissioner under the provisions of this title, except that the tax amnesty shall not apply to any property tax levied or administered by the commissioner pursuant to Chapters 5 and 6 of this title. The program shall apply to tax liabilities for taxable periods ending or transactions occurring on or before December 31, 1990. Amnesty tax return forms shall be in a form prescribed by the commissioner. (Code 1981, § 48-16-4, enacted by Ga. L. 1992, p. 1249, § 1.)

48-16-5. Applicability; effect of audit, assessment, bill, notice, demand for payment, or proceeding; installment agreements; deficiency assessment after amnesty period ends.

(a) The provisions of this chapter shall apply to any eligible taxpayer who files an application for amnesty within the time prescribed by the commissioner and does the following:

(1) Files such returns as may be required by the commissioner for all years or tax reporting periods as stated on the application for which returns have not previously been filed and files such returns as may be required by the commissioner for all years or tax reporting periods for which returns were filed but the tax liability was underreported;

(2) Pays in full the taxes due for the periods and taxes applied for at the time the application or amnesty tax returns are filed within the amnesty period and pays with the taxes the amount of interest due and pays the amount of any additional tax and interest owed as may be determined by the commissioner within 30 days of notification by the commissioner; and

(3) The commissioner may, in his discretion, impose by regulation, the further condition that, in addition to the requirements set forth in paragraphs (1) and (2) of this subsection, the requirement that any eligible taxpayer also pay in full within the amnesty period all taxes previously assessed by the commissioner that are final, due, and owing at the time the application or amnesty tax returns are filed and pays with the taxes the amount of interest due and pays within 30 days of notification by the commissioner the amount of any additional interest owed.

(b) An eligible taxpayer may participate in the amnesty program whether or not the taxpayer is under audit, notwithstanding the fact that the amount due is included in a proposed assessment or an assessment, bill, notice, or demand for payment issued by the commissioner, and without regard to whether the amount due is subject to a pending administrative or judicial proceeding. An eligible taxpayer may participate in the amnesty program to the extent of the uncontested portion of any assessed liability. However, participation in the program shall be conditioned upon the taxpayer's agreement that the right to protest or initiate an administrative or judicial proceeding or to claim any refund of moneys paid under the program is barred with respect to the amounts paid with the application or amnesty return.

(c) The commissioner may enter into an installment payment agreement in cases of severe hardship in lieu of the complete payment required under subsection (a) of this Code section. In such cases, 25 percent of the amount due shall be paid with the application or amnesty return with the balance to be paid in monthly installments not less than 25 percent of the original amount nor to exceed three months following the expiration of the amnesty period. Failure of the taxpayer to make timely payments shall void the terms of the amnesty program. All such agreements and payments shall include interest due and accruing during the installment agreement.

(d) If, following the termination of the tax amnesty period, the commissioner issues a deficiency assessment based upon information independent of that shown on a return filed pursuant to subsection (a) of this Code section, the commissioner shall have the authority to impose penalties and criminal action may be brought where authorized by law only with respect to the difference between the amount shown on the amnesty tax return and the correct amount of tax due. The imposition of penalties or criminal action shall not invalidate any waiver granted under Code Section 48-16-6. (Code 1981, § 48-16-5, enacted by Ga. L. 1992, p. 1249, § 1.)

48-16-6. To whom amnesty granted; effect of notice of criminal investigation or pending criminal litigation; interest or penalty paid prior to request for amnesty; refund or credit of taxes or interest paid under program.

(a) Amnesty shall be granted for any taxpayer who meets the requirements of Code Section 48-16-5 in accordance with the following:

(1) For taxes which are owed as a result of the nonreporting or underreporting of tax liabilities or the nonpayment of any accounts receivable owed by an eligible taxpayer, the state shall waive criminal prosecution and all civil penalties which may be assessed under

any provision of this title for the taxable years or periods for which tax amnesty is requested; and

(2) With the exception of instances in which the taxpayer and commissioner enter into an installment payment agreement authorized under subsection (c) of Code Section 48-16-5, the failure to pay all taxes and interest as shown on the taxpayer's amnesty tax return shall invalidate any amnesty granted pursuant to this chapter.

(b) This chapter shall not apply to any taxpayer who is on notice, written or otherwise, of a criminal investigation being conducted by an agency of the state or any political subdivision thereof or the United States, nor shall this chapter apply to any taxpayer who is the subject of any criminal litigation which is pending on the date of the taxpayer's application in any court of this state or the United States for nonpayment, delinquency, evasion, or fraud in relation to any federal taxes or to any of the taxes to which this amnesty program is applicable.

(c) No refund or credit shall be granted for any interest or penalty paid prior to the time the taxpayer requests amnesty pursuant to Code Section 48-16-5.

(d) Unless the commissioner in his own discretion redetermines the amount of taxes and interest due, no refund or credit shall be granted for any taxes or interest paid under the amnesty program. (Code 1981, § 48-16-6, enacted by Ga. L. 1992, p. 1249, § 1.)

48-16-7. Interest on installment agreements; interest on refunded or credited overpayments.

(a) All installment agreements authorized under subsection (c) of Code Section 48-16-5 shall bear interest on the outstanding amount of tax due during the installment period at the rate prescribed under Code Section 48-2-40.

(b) Notwithstanding the provisions of this title, if any overpayment of tax under this chapter is refunded or credited within 180 days after the return is filed, no interest shall be allowed. (Code 1981, § 48-16-7, enacted by Ga. L. 1992, p. 1249, § 1.)

48-16-8. Regulations, forms and instructions, and other actions necessary to implement chapter; publicity of program.

The commissioner shall promulgate administrative regulations as necessary, issue forms and instructions, and take all actions necessary to implement the provisions of this chapter. The commissioner shall publicize the tax amnesty program in order to maximize the public awareness of and participation in the program. The commissioner may,

for the purpose of publicizing the tax amnesty program, contract with any advertising agency within or outside this state. (Code 1981, § 48-16-8, enacted by Ga. L. 1992, p. 1249, § 1.)

48-16-9. Accounting and reporting of funds collected under amnesty program; disposition of funds.

For purposes of accounting for the revenues received pursuant to this chapter, the commissioner shall maintain an accounting and reporting of funds collected under the amnesty program. All funds collected shall be remitted to the general fund of the state treasury. (Code 1981, § 48-16-9, enacted by Ga. L. 1992, p. 1249, § 1.)

48-16-10. Imposition of cost of collection fee after amnesty period expires.

(a) In addition to all other penalties provided under this chapter or any other law, the commissioner may by regulation impose after the expiration of the tax amnesty period a cost of collection fee of 20 percent of any deficiency assessed for any taxable period ending or transactions occurring after December 31, 1990. This fee shall be in addition to all other applicable penalties, fees, or costs. The commissioner shall have the right to waive any collection fee when it is demonstrated that any deficiency of the taxpayer was not due to negligence, intentional disregard of administrative rules and regulations, or fraud.

(b) In addition to all other penalties provided under this chapter or any other law, the commissioner may pursuant to regulation impose after the expiration of the tax amnesty period a cost of collection fee of 50 percent of any deficiency assessed after the amnesty period for taxable periods ending or transactions occurring on or before December 31, 1990, regardless of when due. This fee shall be in addition to all other applicable penalties, fees, or costs. The commissioner shall have the right to waive any collection fee when it is demonstrated that any deficiency of the taxpayer was not due to negligence, intentional disregard of administrative rules and regulations, or fraud.

(c) The provisions of subsections (a) and (b) of this Code section shall not apply to any account which has been protested pursuant to Code Section 48-2-46 as of the expiration of the amnesty period and which does not become final, due, and owing, or to any account on which the taxpayer is remitting timely payments under a payment agreement negotiated with the commissioner prior to or during the amnesty period.

(d) The fee levied under subsections (a) and (b) of this Code section shall not apply to taxes paid pursuant to the terms of the amnesty

program. (Code 1981, § 48-16-10, enacted by Ga. L. 1992, p. 1249, § 1; Ga. L. 1996, p. 682, § 1; Ga. L. 2013, p. 636, § 3/HB 359.)

The 2013 amendment, effective May 6, 2013, deleted the fourth and fifth sentences of subsections (a) and (b), which read: “Notwithstanding any other provision of law, the department is authorized to retain all funds received as collection fees imposed by the commissioner for use in defraying the cost of collection of deficient taxes. Any such funds not expended for this purpose in the fiscal year in which they are generated shall be deposited in the state treasury; provided, however, that nothing in this Code section shall be construed so as to allow the department to

retain any funds required by the Constitution of Georgia to be paid into the state treasury; and provided, further, that the department shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the ‘Budget Act,’ except Code Section 45-12-92, prior to expending any such funds.”

Administrative rules and regulations. — Substantive rules and regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Field Services Division, Chapter 560-6-2.

48-16-11. Contracts with debt collection agencies or attorneys to collect delinquent taxes, penalties, and interest.

The commissioner may, for the purpose of collecting any delinquent taxes due from a taxpayer, contract with any debt collection agency or attorney doing business within or outside this state for the collection of such delinquent taxes, including penalties and interest thereon. (Code 1981, § 48-16-11, enacted by Ga. L. 1992, p. 1249, § 1.)

48-16-12. Willful failure to make return; false returns; willful failure to pay taxes; failure to obey a subpoena or order.

(a) As used in this Code section, the term “return” means and includes any return, declaration, or form prescribed by the commissioner with respect to the taxes covered by the amnesty program.

(b) In addition to all other penalties provided under this chapter and any other law, any person who willfully fails to make a return or willfully makes a false return or conspires to do so, or who willfully fails to pay taxes owing, withheld, or collected, with intent to evade payment of the tax owed or the amount withheld or collected, or any part thereof, or who conspires to do so shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than three years or by a fine of not more than \$5,000.00, or both.

(c) Any person who fails to obey a subpoena or order of the commissioner issued pursuant to Code Section 48-2-8 for purposes of enforcing this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than \$25.00 and not more than \$100.00 or imprisoned in the county jail for not more than three months, or both. For any subsequent offense such person shall,

upon conviction thereof, be punished by imprisonment for not more than one year or by a fine of not more than \$1,000.00, or both. (Code 1981, § 48-16-12, enacted by Ga. L. 1992, p. 1249, § 1; Ga. L. 1993, p. 91, § 48.)

CHAPTER 16A

PROPERTY TAX AMNESTY PROGRAM

Sec.		Sec.	
48-16A-1.	Legislative findings, declarations, and intent.	48-16A-6.	Taxpayers eligible for amnesty.
48-16A-2.	Short title.	48-16A-7.	Interest on installment agreements or refunded or credited overpayments.
48-16A-3.	Definitions.	48-16A-8.	Publicizing of program.
48-16A-4.	Development and administration of program; waiver of penalties; duration of program; forms.	48-16A-9.	Accounting and reporting of collections.
48-16A-5.	Requirements for participation in program by eligible taxpayers.	48-16A-10.	Cost of collection fee.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, State and Local Taxation, § 712 et seq.

C.J.S. — 85 C.J.S., Taxation, § 991 et seq.

48-16A-1. Legislative findings, declarations, and intent.

The General Assembly finds and declares that a public purpose is served by the waiver of tax penalties and criminal prosecution in return for the immediate reporting and payment of previously underreturned, unreturned, or unpaid state and local ad valorem tax liabilities. The General Assembly further finds and declares that the benefits gained through this program include, among other things, increased collection of certain currently owed state and local ad valorem taxes, permanently bringing into the state and local tax system taxpayers who have been evading payment of local taxes and providing an opportunity for taxpayers to satisfy state and local ad valorem tax obligations before stepped-up local tax enforcement programs take effect. It is the intention of the General Assembly in enacting this chapter that the property tax amnesty program provided under this chapter be a one-time occurrence which shall not be repeated in the future because taxpayers' expectations of any future property tax amnesty programs could have a counterproductive effect on compliance under this chapter. (Code 1981, § 48-16A-1, enacted by Ga. L. 1994, p. 428, § 3.)

48-16A-2. Short title.

This chapter shall be known and may be cited as the "Property Tax Amnesty Program Act." (Code 1981, § 48-16A-2, enacted by Ga. L. 1994, p. 428, § 3.)

48-16A-3. Definitions.

As used in this chapter, the term:

(1) “Ad valorem tax” or “property tax” means any state or local ad valorem tax levied by any taxing jurisdiction.

(2) “Administering governing authority” means the county governing authority in the case of state, county, and school ad valorem tax or the municipal governing authority in the case of municipal or independent school system ad valorem tax.

(3) “Delinquent taxes” means an amount of ad valorem property tax, penalty, or interest which has been recorded as due and entered in the account records or any ledger maintained in the office of the local collection official, or which a taxpayer should reasonably expect to become due as a direct or indirect result of any pending or completed audit or assessment, which a taxpayer knows is being conducted by any state or local assessing authority.

(4) “Final, due, and owing” means an assessment and ad valorem tax amount which has become final and is owed to the taxing jurisdiction due to either the expiration of the taxpayer’s appeal rights or the rendition of a final determination of assessed value based upon an appeal.

(5) “Governing authority” means that official or group of officials responsible for the governing of a taxing jurisdiction.

(6) “Local collection official” means that local official responsible for the collection of ad valorem taxes.

(7) “Taxing jurisdiction” means the state or any district within which a county or municipality, a county, independent, or area school system, or a consolidated city-county government or other political subdivision of the state exercises the power to levy or causes to be levied any ad valorem taxes to carry out its purposes.

(8) “Taxpayer” means any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary, or any other entity of any kind subject to any ad valorem tax. (Code 1981, § 48-16A-3, enacted by Ga. L. 1994, p. 428, § 3.)

48-16A-4. Development and administration of program; waiver of penalties; duration of program; forms.

(a) Upon the adoption of a resolution or ordinance by the governing authority of each local taxing jurisdiction for which a local collection official collects delinquent taxes indicating that governing authority’s

desire to participate in the property tax amnesty program, the administering governing authority shall be authorized to develop and administer a one-time property tax amnesty program as provided in this chapter. The county governing authority shall be authorized to include the state's delinquent tax in the property tax amnesty program. Such administering governing authority shall be authorized to waive, in whole or in part, all penalties or interest or both with respect to outstanding ad valorem tax liabilities for all tax years ending or transactions occurring on or before December 31, 1993. The terms and conditions of such waiver shall be specified in the resolution or ordinance adopted by such administering governing authority and may include a delegation of authority to the local collecting official of the authority to make such waiver, in whole or in part, on a case-by-case basis. The administering governing authority shall provide for the necessary forms for the filing of property tax amnesty applications and returns.

(b) The local collection official shall, upon the voluntary filing of a return to the official responsible for the receiving of property tax returns and the remission of ad valorem taxes owed by any taxpayer, if required, waive all penalties and interest that are assessed or subject to being assessed for outstanding ad valorem tax liabilities for all tax years ending or transactions occurring on or before December 31, 1993. Such waiver shall be in accordance with the terms of the resolution or ordinance of the administering governing authority.

(c) Any property tax amnesty program conducted under the authority of this chapter shall begin by October 31, 1994, and shall be completed no later than December 31, 1994, and shall apply to all taxpayers owing ad valorem taxes, penalties, or interest. The program shall apply to outstanding ad valorem tax liabilities for all tax years ending on or before December 31, 1993. Property tax amnesty tax return forms shall be in a form prescribed by the administering governing authority. (Code 1981, § 48-16A-4, enacted by Ga. L. 1994, p. 428, § 3; Ga. L. 1995, p. 10, § 48.)

48-16A-5. Requirements for participation in program by eligible taxpayers.

(a) The provisions of this chapter shall apply to any eligible taxpayer who files an application for property tax amnesty within the time prescribed by the administering governing authority and does the following:

- (1) Files such returns as may be required by the local official responsible for receiving returns for all tax years as stated on the application for which returns have not previously been filed and files

such returns as may be required by the local official responsible for receiving returns for all tax years for which returns were filed but on which the value of the taxpayer's property was understated;

(2) Pays in full the ad valorem taxes and, if required, pays in full the interest due, for the periods applied for at the time of the application and pays the amount of any additional ad valorem tax and, if required, interest owed, as may be determined from any additional returns by the local collection official within 30 days of notification by such local collection official; and

(3) The administering governing authority may by local resolution or ordinance impose the further condition that, in addition to the requirements set forth in paragraphs (1) and (2) of this subsection, the requirement that any eligible taxpayer also pay in full within the property tax amnesty period all ad valorem taxes and, if required, penalties and interest previously levied and assessed that are final, due, and owing at the time the application or property tax amnesty tax returns are filed.

(b) An eligible taxpayer may participate in the property tax amnesty program whether or not the taxpayer is under audit, notwithstanding the fact that the amount due is based upon a proposed assessment or an assessment and without regard to whether the amount due is subject to a pending administrative or judicial proceeding. An eligible taxpayer may participate in the property tax amnesty program to the extent of the uncontested portion of any assessed ad valorem tax liability. However, participation in the program shall be conditioned upon the taxpayer's agreement that the right to protest or initiate an administrative or judicial proceeding or to claim any refund of moneys paid under the program is barred with respect to the amounts paid with the application or property tax amnesty return.

(c) The local collection official may enter into an installment payment agreement in cases of severe hardship in lieu of the complete payment required under subsection (a) of this Code section. In such cases, 25 percent of the amount due shall be paid with the application or property tax amnesty return with the balance to be paid in monthly installments not less than 25 percent of the original amount nor to exceed three months following the expiration of the property tax amnesty period. Failure of the taxpayer to make timely payments shall void the terms of the property tax amnesty program. All such agreements and payments shall, if required, include interest due and accruing during the installment agreement.

(d) If, following the termination of the property tax amnesty period, additional taxes are determined to be due from the taxpayer based upon information independent of that shown on a return filed pursuant to

subsection (a) of this Code section, the local collection official shall have the authority to impose penalties only with respect to the difference between the amount shown on the property tax amnesty tax return and the correct amount of tax due. The imposition of penalties shall not invalidate any waiver granted under Code Section 48-16A-6. (Code 1981, § 48-16A-5, enacted by Ga. L. 1994, p. 428, § 3.)

48-16A-6. Taxpayers eligible for amnesty.

(a) Property tax amnesty shall be granted for any taxpayer who meets the requirements of Code Section 48-16A-5 in accordance with the following:

(1) For ad valorem taxes which are owed as a result of the nonreturning or underreturning of any ad valorem tax liabilities or the nonpayment of any delinquent ad valorem taxes owed by an eligible taxpayer, the local collection official shall waive criminal prosecution and all civil penalties which may be assessed under any provision of law for the taxable years or periods for which property tax amnesty is requested; and

(2) With the exception of instances in which the taxpayer and local collection official enter into an installment payment agreement authorized under subsection (c) of Code Section 48-16A-5, the failure to pay all taxes and, if required, interest as shown on the taxpayer's property tax amnesty tax return shall invalidate any property tax amnesty granted pursuant to this chapter.

(b) This chapter shall not apply to any taxpayer who is on notice, written or otherwise, of a criminal investigation being conducted by an agency of the state or any political subdivision thereof, nor shall this chapter apply to any taxpayer who is the subject of any criminal litigation which is pending on the date of the taxpayer's application in any court of this state for nonpayment, delinquency, evasion, or fraud in relation to any of the ad valorem taxes to which this property tax amnesty program is applicable.

(c) No refund or credit shall be granted for any interest or penalty paid prior to the time the taxpayer requests amnesty pursuant to Code Section 48-16A-5.

(d) Unless the local collection official in the discretion of such local collection official redetermines the amount of taxes and interest due, no refund or credit shall be granted for any taxes or interest paid under the property tax amnesty program. (Code 1981, § 48-16A-6, enacted by Ga. L. 1994, p. 428, § 3.)

48-16A-7. Interest on installment agreements or refunded or credited overpayments.

(a) All installment agreements authorized under subsection (c) of Code Section 48-16A-5 shall, if required, bear interest on the outstanding amount of tax due during the installment period at the rate prescribed under Code Section 48-2-40.

(b) Notwithstanding any other provisions of this title, if any overpayment of ad valorem tax under this chapter is refunded or credited within 180 days after the return is filed, no interest shall be allowed. (Code 1981, § 48-16A-7, enacted by Ga. L. 1994, p. 428, § 3.)

48-16A-8. Publicizing of program.

The administering governing authority shall publicize the property tax amnesty program in order to maximize the public awareness of and participation in the program. The administering governing authority may, for the purpose of publicizing the property tax amnesty program, contract with any advertising agency within or outside this state. (Code 1981, § 48-16A-8, enacted by Ga. L. 1994, p. 428, § 3.)

48-16A-9. Accounting and reporting of collections.

For purposes of accounting for the revenues received pursuant to this chapter, the local collection official shall maintain an accounting and reporting of funds collected under the property tax amnesty program. (Code 1981, § 48-16A-9, enacted by Ga. L. 1994, p. 428, § 3.)

48-16A-10. Cost of collection fee.

(a) In addition to all other penalties provided under this chapter or any other law, the administering governing authority may by ordinance or resolution impose after the expiration of the property tax amnesty period a cost of collection fee of 50 percent of any deficiency levied after the property tax amnesty period for taxable periods ending on or before December 31, 1993, regardless of when due. This fee shall be in addition to all other applicable penalties, fees, or costs. The local collection official shall have the right to waive any collection fee when it is demonstrated that any deficiency of the taxpayer was not due to negligence, intentional disregard of local ordinances or resolutions, or fraud.

(b) The provisions of subsection (a) of this Code section shall not apply to any account which is under appeal as of the expiration of the property tax amnesty period and which does not become final, due, and owing, or to any account on which the taxpayer is remitting timely

payments under a payment agreement negotiated with the local collection official prior to or during the property tax amnesty period.

(c) The fee levied under subsection (a) of this Code section shall not apply to taxes paid pursuant to the terms of the property tax amnesty program. (Code 1981, § 48-16A-10, enacted by Ga. L. 1994, p. 428, § 3.)

CHAPTER 17

RESERVED

Sec.
48-17-1 through 48-17-17. Redesignated.

Editor’s notes. — Ga. L. 2013, p. 37, § 1-2/HB 487, effective April 10, 2013, redesignated the former provisions of this chapter, relating to coin operated amusement machines, as Article 3 of Chapter 27 of Title 50, and reserved the former chapter designation.

48-17-1 through 48-17-17. Redesignated.

Reserved. Redesignated as Article 3 of Chapter 27 of Title 50 by Ga. L. 2013, p. 37, § 1-1/HB 487, effective April 10, 2013.

Editor’s notes. — Ga. L. 2013, p. 37, § 1-1/HB 487, effective April 10, 2013, redesignated former Code Sections 48-17-1 through 48-17-17 as Code Sections 50-27-70 through 50-27-86.

CHAPTER 18**CERTIFIED CAPITAL COMPANIES**

Sec.

48-18-1 through 48-18-9. [Repealed].

48-18-1 through 48-18-9.

Repealed by Ga. L. 2004, p. 431, § 2, effective May 13, 2004.

Editor's notes. — This chapter, consisting of Code Sections 48-18-1 through 48-18-9, concerning state insurance premium tax credits with respect to certified capital companies, was based on Code 1981, §§ 48-18-1 through 48-18-9, enacted by Ga. L. 2002, p. 954, § 4; Ga. L. 2003, p. 665, §§ 40, 41.

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